

Central Valley Regional Water Quality Control Board
6/7 December 2012 Board Meeting

Response to Comments
for the
City of Tracy
Tracy Wastewater Treatment Plant
Tentative NPDES Permit Renewal

The following are Central Valley Regional Water Quality Control Board (Central Valley Water Board) staff responses to comments submitted by interested parties regarding the tentative Waste Discharge Requirements (NPDES Permit No. CA0079154) renewal for the City of Tracy (Discharger) Wastewater Treatment Plant (Facility).

The tentative NPDES Permit was issued for a 30-day public comment period on 24 September 2012 with comments due by 26 October 2012. The Central Valley Water Board received public comments regarding the tentative Permit by the due date from the Discharger, the United States Environmental Protection Agency (USEPA), California Urban Water Agencies (CUWA), and the Central Valley Clean Water Association (CVCWA). Changes were made to the tentative Permit based on public comments received.

The submitted comments were accepted into the record, and are summarized below, followed by Central Valley Water Board staff responses.

DISCHARGER COMMENTS

Discharger Comment No. 1. Permit Effective Date - Administrative Information

Since there are no dates on the draft permit, the Discharger requests to ensure that the permit's effective date is properly set as 50 days after the permit adoption date.

RESPONSE: Central Valley Water Board staff concurs that the effective date will be 50 days after the adoption date.

**Discharger Comment No. 2. Use Term "Permittee" instead of "Discharger."
Section II Findings, Paragraph D (Fact Sheet, Section I.A.)**

The Discharger requests to change the word "Discharger" to "Permittee" throughout the permit because the federal regulations use the term "permittee." The term "discharger" has a much more negative connotation that is not accurately applied to the City, which operates an advanced tertiary treatment facility discharging recycled water. Thus, the Discharger requests that the Regional Board should make a policy decision, starting with this Permit, that the permit holder of advanced treatment facilities will be called "permittee" instead of "discharger" in recognition of the additional investment made in installing and operating advanced pollution control facilities.

RESPONSE: Central Valley Water Board staff does not concur. The City is named as the “Discharger” because it is the entity that is discharging waste from a point source, the wastewater treatment plant, into a receiving water body. The term “Discharger” is appropriate and has not been changed in the proposed Order.

Discharger Comment No. 3. The Permit Contains Provisions More Stringent than Federal Law and, Therefore, the Conclusion that It Does Not Contain Provisions More Stringent than Federal Law Must be Removed - Section II. Findings, Paragraph P, pg. 10

The Discharger requests to remove the last sentence of Finding II.P. and remove other similar, unsupported findings from the Fact Sheet. The last sentence of Finding II.P states the following: "Collectively, this Order's restrictions on individual pollutants are no more stringent than required to implement the technology-based requirements of the CWA and the applicable water quality standards for purposes of the CWA." The discharger reasons to this request are the following:

The Discharger has three main arguments:

- a) The Order cannot be viewed *collectively* as more stringent;
- b) The Permit's technology-based pollutant restrictions are more stringent than required by the CWA;
- c) The Order should state that the individual effluent limitations being required are in many cases more stringent than required by federal and state law;

RESPONSE: The Discharger essentially claims that the individual effluent limitations being required are in many cases more stringent than required by federal law and a Water Code section 13263/13241 analysis should be conducted in each of those cases. This argument is misplaced because Clean Water Act section 301(b)(1)(C) explicitly states that permits must contain “any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations.” The Court in *Burbank*, cited by the Discharger, specifically noted that CWA section 301(b)(1)(C) specifically precludes economic consideration and this same reasoning applies when implementing a state-adopted water quality standard as required under 301(b)(1)(C).

Second, the Court in *Burbank* further found that when a regional water quality control board adopts a permit that merely implements an existing water quality objective that serves as a federal water quality standard, there is no requirement to consider any of the 13241 Factors. Because the Central Valley Water Board is implementing existing water quality objectives that serve as water quality standards, there is no requirement to consider any of the 13241 Factors.

Third, even assuming for the sake of argument that consideration of the 13241 Factors is required in this case, which it is not, Water Code section 13241 does not require that a board make specific findings on each of the specified factors. (*City of Arcadia v. State Water Resources Control Board* (2010) 191 Cal.App.4th 156, 177.)

The Discharger also claims that (1) the permit's technology-based pollutant restrictions are more stringent than required by the CWA and (2) the individual effluent limitations being required are in many cases required by federal and state law. These claims are similarly misplaced. As noted in *In the Matter of the Petition of Stockton et al.* WQO No, 2009-0012:

“The federal Clean Water Act contains a technology based requirement that publicly owned treatment works must attain secondary treatment. In addition, permits must include more stringent limitations necessary to meet water quality standards, treatment standards, or schedules of compliance. Tertiary treatment is not specifically required for POTWs by federal law, but it may be a reasonable requirement where the treatment is necessary to achieve compliance with water quality standards. It is appropriate to include provisions that require tertiary treatment where necessary to protect water quality. The exercise of discretion in adopting appropriate permit requirements includes tertiary treatment and including requirements to ensure that the Facility is operated properly.” (*Id.* at p. 5.)

Here, as in *Stockton*, the Central Valley Water Board believes that this is a reasonable requirement where the treatment is necessary to achieve compliance with water quality standards. It is appropriate to include provisions that required tertiary treatment where necessary to protect water quality and this exercise of discretion is well-founded in adopting appropriate permit requirements.

In addition, as noted in *Stockton*, “In establishing the specific requirements for a tertiary treatment plant, the permit must, of course, include water quality-based effluent requirements as necessary to protect water quality. The regional board also has discretion to include other requirements to ensure the facility is operating properly. But there is no legal requirement to adopt technology-based effluent limitations for tertiary treatment.”

Again, in this case, there is no legal requirement to adopt technology-based effluent limitations for tertiary treatment.

Furthermore, in establishing the specific requirements for a tertiary treatment plant, the permit must, of course include water quality-based effluent limitations as necessary to protect water quality. The Central Valley Water Board also has discretion to include other requirements to ensure that the facility is operating properly. As noted previously, the CWA requires the imposition of certain types of discharge limitations on point source dischargers, including POTWs, “including those necessary to meet water quality standards.” In this case, the permit implements

water quality standards as required by CWA section 301(b)(1)(C) and is no more stringent than federal law.

Finally, as noted in the Tentative Order, the Central Valley Water Board previously considered the 13241 Factors back in 2007 during the last permit term when the Central Valley Water Board first required equivalent to tertiary-level treatment. There is no significant or substantial change to warrant an additional consideration of the Water Code section 13241 Factors. In short, in this case, the Central Valley Water Board is not required to make specific findings yet again to consider the 13241 Factors when considering the renewal of the City's NPDES permit.

Discharger Comment No. 4. Antidegradation Policy - Finding II.Q., and Fact Sheet Pg. F-11, Section III.C.S.

The Discharger requests to amend the paragraph related to the Antidegradation Policy to accurately reflect the relationship between the State Water Resources Control Board (SWRCB) Resolution 68-16 and federal law. The SWRCB Resolution No. 68-16 cannot "incorporate the federal antidegradation policy" since that federal policy was adopted decades after the SWRCB resolution of 1968. To be accurate, the statement should read "... Resolution 68-16 ~~incorporates~~ has been deemed to be consistent with the requirements of the federal antidegradation policy," and/or alternatively, "... Resolution 68-16 ~~incorporates~~ satisfies the federal requirement for adoption of an anti-degradation policy by the State of California."

The current language is inaccurate and should be changed before the final permit is adopted.

RESPONSE: Central Valley Water Board staff does not concur. The water quality standards applicable to waters of the State include State Water Resources Control Board Resolution 68-16 and, for waters of the United States, the federal anti-degradation policy. The State Water Resources Control Board has interpreted 68-16 to incorporate the federal antidegradation policy under circumstances where the federal antidegradation policy applies. See *Rimmon C. Fay*, WQO No. 86-17 at pp. 17-19.

Discharger Comment No. 5. Discharge Prohibition A. (Fact Sheet, Section IV.A.I)- Applies only to "treated wastewater".

The Discharger requests the following two changes to the tentative permit:

- a) The Discharger requests to modify the language in Prohibition III.A. and the Fact Sheet by clarifying that this applies only to "treated wastewater" or by using the following alternative language "Except as set forth in Provision III.B." Untreated wastewater and waste would be regulated under Discharge Prohibition III.B. Inadequate justification exists for this Discharge Prohibition.

- b) The Fact Sheet description of this prohibition is not accurate and needs to be modified to correspond to the language of the prohibition.

RESPONSE: Central Valley Water Board staff concurs. Prohibitions III.A and III.B in the tentative Order read as follows:

- A. Discharge of wastewater at a location or in a manner different from that described in the Findings is prohibited.
- B. The by-pass or overflow of wastes to surface waters is prohibited, except as allowed by Federal Standard Provisions I.G. and I.H. (Attachment D).

Discharge Prohibition III.A only applies to discharges of “treated” wastewater, therefore, the proposed Order has been modified as shown below in underline/strike out format:

Limitations and Discharge Requirements, Section III.A

- A. Discharge of treated wastewater at a location or in a manner different from that described in the Findings is prohibited.

Fact Sheet (Attachment F), Section IV.A.1

1. **Prohibition III.A (No discharge of treated wastewater at locations or application of waste other than that described in this Order).** This prohibition is based on Water Code section 13260 that requires filing of a report of waste discharge (ROWD) before discharges can occur. The Discharger submitted a ROWD for the discharges described in this Order; therefore, discharges not described in this Order are prohibited.

Discharger Comment No. 6. Discharge Prohibition III.D. (Fact Sheet, Section IV.A.4.)- Remove Provisions about "Pollutant-Free Wastewater."

The City has been piloting and is currently planning to implement a full-scale thermal desalination process whereby its effluent will be desalinated and then blended back into the non-desalinated effluent in order to meet the applicable water quality standards for salinity. Provision III.D., if it remains, may have the unintended consequence of making the City's desalination project unlawful under the Permit, thereby thwarting this important salinity control project. In addition, this provision violates Water Code section 13360(a) by prescribing the manner of compliance. For these reasons, and since there is no authority provided for this provision, the City requests that this provision be deleted from the Permit.

RESPONSE: Central Valley Water Board staff does not concur. Prohibition III. B. reads as follows:

- D.** The Discharger shall not allow pollutant-free wastewater to be discharged into the treatment or disposal system in amounts that significantly diminish the system's capability to comply with this Order. Pollutant-free wastewater means rainfall, groundwater, cooling waters, and condensates that are essentially free of pollutants.

Discharge Prohibition III.D does not prohibit any discharge of pollutant-free wastewater into the treatment or disposal system. It prohibits the discharge of pollutant-free wastewater into the treatment or disposal system that significantly diminishes the system's capability to comply with the Order. This prohibition is necessary to ensure proper design and operation of treatment facilities in accordance with 40 CFR 122.41. The prohibition does not prohibit the Discharger from blending desalinated water back into the municipal wastewater, unless the pollutant-free desalinated water significantly diminishes the treatment system's capability to comply with the Order.

Discharger Comment No. 7. Inclusion of Mass Limits Not Required by Federal Law – Section IV. Effluent Limitations and Discharge Specifications, Table 6

The Discharger states that Federal law does not require mass limits where other included limits and the applicable water quality objectives are concentration-based, such as BOD and TSS (40 C.F.R. § 122.45(f)(ii)). The federal regulations only require concentration-based effluent limits and 85% removal requirements. Thus, the Discharger request to remove all mass limits from Table 6 because they are not required by Federal law and they are not adequately justified. The Dischargers also referenced two other permits from the San Francisco Bay Water Board (Region 2) where no mass limits were included (Orders R2-2012-0051 and R2-2008-0014).

RESPONSE: 40 CFR section 122.44(f)(2) states that pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations. In addition, as noted in *East Bay Municipal Utility District*, WQO No. 2002-0012 at p. 6, 40 CFR section 122.44(f)(2) clearly endorses the application of both concentration and mass limits. Furthermore, USEPA recommends both mass and concentration limits. See Technical Support Document for Water Quality-Based Toxics Control (TSD), EPA/505/2-90-001, March 1991 at pp. 110-111. Finally, the reference to two other permits from the San Francisco Bay Water Board is mistaken as the two permits involve POTWs treating secondary-treated wastewater. Unlike the City of Tracy, neither permit pertains to a tertiary treatment facility.

Discharger Comment No. 8. Inclusion of Daily or Instantaneous Limits Not Required by Federal Law – Section IV. Effluent Limitations and Discharge Specifications, Table 6

The Discharger requests to remove improperly justified short term average limits that are not monthly and weekly averages as required by federal law.

The Discharger has five main arguments:

a) Federal law only authorizes monthly and weekly average effluent limitations for publicly owned treatment works ("POTW s") without a demonstration that such effluent limitations are "impracticable."

The fact that the federal regulations do not prohibit a state from going beyond federal law to include both mass and concentration limits (40 C.F.R. § 122.45(t)(2)) does not make this a federal requirement. The Regional Board's choice to be more stringent than required by federal law requires additional analysis and justification. Because no additional analysis has been done to demonstrate impracticability, the Regional Board must remove the daily maximum, instantaneous, 1-hour, 4-day and 7 -day median effluent limits from City's tentative permit at Table 6 and Provision IV .A.1 that are inconsistent with and more stringent than federal law because not stated as weekly and monthly averages. Additionally, the findings in the Fact Sheet do not prove that weekly and monthly average limits prescribed by federal law are impracticable, particularly when those limits are also simultaneously prescribed.

b) The justification for use of daily maximum limits is not clear for the constituents in Table 6 since many of these are not water quality-based limits.

c) Case Law for the City of Ames, Iowa, EPA Environmental Appeals Board, NPDES Appeal No. 94-6 (Apr. 4, 1996) applies this rule to all constituents, even those that have the ability to be acutely toxic, such as ammonia.

d) Some of the daily or instantaneous maximum limits included in the Permit would be adequately regulated by monthly averages. (e.g., Daily or instantaneous maximum limits for bis(2-ethylhexyl)phthalate, chlorodibromomethane, dichlorobromomethane, and nitrate+nitrite may be related to objectives set for long-term human health protection. The limits for these constituents would be adequately regulated by monthly averages alone since there is no evidence that these human health-based limits are impracticable to apply as monthly or even longer (i.e., annual) averages.

e) Averaging periods for the objectives and the averaging periods for the effluent limits need to be identical, such as with total chlorine residual, but this is not the case.

RESPONSE: Central Valley Water Board staff does not concur. Ample legal authority exists for acknowledging that either more frequent or less frequent discharge limitations may be appropriate if the permitting agency explains the

impracticability of average weekly and average monthly discharges. (See, e.g., 40 CFR section 122.45(d) and *City of Vacaville*, WQO No. 2002-0015.) As appropriate, the Central Valley Water Board made express findings of impracticability and/or explained the basis for establishing short terms average limits that are not monthly and weekly averages.

Discharger Comment No. 9. Pathogens, Temperature, Ammonia, Nitrate+ Nitrite, and Acute Toxicity Limits. Provision IV.A.I.a, Table 6, and Fact Sheet pgs. F-49 to F-52

The Discharger request to remove pH, temperature, ammonia, nitrate + nitrite, and acute toxicity limits as it contests that the limits are improperly imposed where no reasonable potential exists. The Discharger has two arguments to support the removal of these limits:

a) The City's Permit is not regulating the discharge of "untreated domestic wastewater," it is regulating tertiary treated recycled water with nitrification and denitrification that has been in place since August of 2008.

b) The Discharger is in compliance with federal antibacksliding regulations. Under CW A section 402(o)(2)(A), backsliding would be allowed since "material and substantial alterations or additions to the permitted facility" occurred after permit issuance which justify the application of a less stringent effluent limitation. Also, under CW A section 402(o)(2)(B)(i), backsliding would be allowed since "information is available which was not available at the time of permit issuance ... which would have justified the application of a less stringent effluent limitation at the time of permit issuance."

RESPONSE: Central Valley Water Board staff does not concur. The discharge has reasonable potential to cause or contribute to an exceedance of the applicable water quality objectives for pH, pathogens, temperature, ammonia, nitrate+nitrite, and acute toxicity in the receiving water. Therefore, water quality-based effluent limitations (WQBELs) are required in accordance with 40 CFR 122.44.

For priority pollutants, the SIP dictates the procedures for conducting the RPA. The constituents referred to in the Discharger's comment are not priority pollutant constituents. Therefore, the Central Valley Water Board is not restricted to one particular RPA method. Due to the site-specific conditions of the discharge, the Central Valley Water Board has used best professional judgment in determining the appropriate method for conducting the RPA for these non-priority pollutant constituents. USEPA's September 2010 NPDES Permit Writer's Manual, page 6-30, states, "*State implementation procedures might allow, or even require, a permit writer to determine reasonable potential through a qualitative assessment process without using available facility-specific effluent monitoring data or when such data are not available...A permitting authority might also determine that WQBELs are*

required for specific pollutants for all facilities that exhibit certain operational or discharge characteristics (e.g., WQBELs for pathogens in all permits for POTWs discharging to contact recreational waters)." The Facility is a POTW that treats domestic wastewater. Treated domestic wastewater, unless properly controlled can exceed the applicable water quality objectives for pH, ammonia, nitrate+nitrite, pathogens, temperature, and acute toxicity. Therefore, the discharge has reasonable potential and WQBELs are required in the proposed Order. The Fact Sheet of the proposed Order has been modified to clarify the reasonable potential analyses for these constituents.

Discharger Comment No. 10. Footnote or Compliance Determination Language Needed for pH Limits - Provision IV.A.I., Final Effluent Limitations

If the limits for pH are maintained (see Discharger Comment No. 8), the Discharger requests to include the following footnote to Table 6 or to the compliance determination in Section VII as is utilized in other regions:

FN to Table 6 pH Limits: If the Discharger monitors pH continuously, pursuant to 40 CFR 401.17, the Discharger shall be in compliance with the pH limitation specified herein provided that both of the following conditions are satisfied: (i) the total time during which the pH values are outside the required range of pH values shall not exceed 7 hours and 26 minutes in any calendar month; and (ii) no individual excursion from the range of pH values shall exceed 60 minutes.

RESPONSE: Central Valley Water Board staff does not concur. The effluent limitations for pH in the proposed Order are water quality-based effluent limitations necessary to protect the beneficial uses of the receiving water. The regulations cited in the Discharger's comment are not applicable to the discharge. These regulations are for effluent limitations that have been set in accordance with effluent limitation guidelines (ELGs). ELGs are technology-based effluent limitations and are used for setting effluent limitations for non-municipal dischargers.

Discharger Comment No. 11. Bis(2- ethylhexyl)phthalate Limits - Provision IV.A.I., Table 6, and Fact Sheet pg. F-53.

The Discharger requested to revise the limits for bis(2-ethylhexyl)phthalate to include only a monthly average limit of 36 ug/L to include the entire harmonic dilution mixing zone of 20:1. Revise the Fact Sheet to remove references to a more limited dilution ratio.

The Discharger has four additional arguments to support this request:

a) The mixing zone and dilution credits should be based on the proposed build out flows of 16 MGD and not the current design flows. The use of the current design flows

provides a very conservative dilution ratio. Thus, the proposed build out flows of 16 MGD are more appropriate and reasonable.

b) A performance-based limit, which is not required by federal law or the State Implementation Policy ("SIP"). The reduction of the dilution to 7.5:1 when calculating the bis-2 limit becomes a performance-based limit.

c) The SIP does not require that the plant performance should be a consideration in the establishment of dilution credit or in the sizing of an acceptable mixing zone.

d) The mixing zone and dilution credits reduction also cannot be based on antidegradation or Best Practicable Treatment and Control ("BPTC") because there has been no antidegradation or BPTC analysis.

RESPONSE: Central Valley Water Board staff does not concur. The mixing zone for bis(2-ethylhexyl)phthalate is appropriately sized to comply with the SIP. Section 1.4.2.2 of the SIP requires that, "*A mixing zone shall be as small as practicable.*", and Section 1.4.2.2.B requires, "*The RWQCB shall deny or significantly limit a mixing zone and dilution credits as necessary to protect beneficial uses, meet the conditions of this Policy, or comply with other regulatory requirements.*"

For bis(2-ethylhexyl)phthalate, the WQBELs based on a 20:1 dilution credit are an average monthly effluent limit (AMEL) and maximum daily effluent limit (MDEL) of 30 µg/L and 92 µg/L, respectively. Section 1.4.2.2 of the SIP requires that mixing zones are as small as practicable. Section 1.4.2.2.B of the SIP, in part states, "*The RWQCB shall deny or significantly limit a mixing zone and dilution credits as necessary to protect beneficial uses, meet the conditions of this Policy, or comply with other regulatory requirements.*" Based on existing Facility performance, the Facility can meet WQBELs calculated using a dilution credit of 7.5:1 (i.e., AMEL of 12 µg/L and MDEL of 49 µg/L), which correlates to a significantly smaller mixing zone. Based on modeling by the discharger this level of dilution would occur in the zone of initial dilution that would extend a maximum of 150 feet from the outfall. This represents a mixing zone that is as small as practicable for this Facility and that fully complies with the SIP.

Furthermore, the granting of the full dilution credits could allocate an unnecessarily large portion of the receiving water's assimilative capacity for bis(2-ethylhexyl)phthalate and could violate the Antidegradation Policy. Although the Antidegradation Policy does not apply within a mixing zone, the allowance of a mixing zone allows an increase in the discharge of pollutants. Therefore, when a mixing zone and dilution credits are allowed, it is necessary to ensure the discharge complies with the Antidegradation Policy outside the mixing zone. The Antidegradation Policy requires that, "*Any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste*

discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.” In this case for bis(2-ethylhexyl)phthalate, the proposed Order must require, at minimum, that the discharge meet existing facility performance, to ensure the Facility implements best practicable treatment or control (BPTC). Allowing a larger mixing zone (i.e., the full dilution credit) would allow the Discharger to increase its loading of bis(2-ethylhexyl)phthalate to Old River and reduce the treatment and/or control of the pollutant, which is contrary to the BPTC requirements of the Antidegradation Policy.

Discharger Comment No. 12. Copper and Lead Limits - Provision IV.A.I., Table 6

The Discharger requested to re- calculated monthly and weekly average CTR-based effluent limits for copper and to remove lead effluent limits from the Permit.

The Discharger provided the following rationale for the request for copper and lead:

Copper

- a) No Reasonable potential was found for copper using the Basin Plan objective.
Limits should not be based on the Basin Plan objective. The Basin Plan objective fails to consider hardness effects on
- b) Limits should be based on the CTR
- c) The limits for copper should be 13 ug/L (AMEL) and 27 ug/L (MDEL).

Lead

No Reasonable potential was found for lead. The SIP states on pg. 6, Step 6 that "If B [maximum ambient concentration] is greater than the C [the lowest applicable criterion] and the pollutant was *not detected in any of the effluent samples*, effluent monitoring is required ... " (emphasis added) This means that if the pollutant was not detected in any of the effluent samples, then no effluent limits are required. The minimum reporting limit for lead was 0.5 1-µg/L, and no samples were reported above that level. Eight effluent samples were reported as J-flagged, or estimated at a concentration above the method detection limit and below the reporting limit, with a maximum estimated value of 0.21 1-µg/L. These estimated values should not be considered as actual detected concentrations. Therefore, reasonable potential cannot be triggered by the ambient data alone. Effluent limits for lead should not be assigned where reasonable potential has not been established.

RESPONSE:

Copper. Central Valley Water Board staff does not concur with the Discharger's comment regarding copper. The applicable water quality objectives for copper for Old River for the protection of freshwater aquatic life are the CTR hardness-dependent criteria and the site-specific objective for the Delta. The Discharger

contends that the CTR criteria should be used to calculate the WQBELs instead of the site-specific objective, because the site-specific objective is overly conservative for application since hardness is not considered. The Discharger also contends that footnote b of 40 CFR §131.38(b)(1) implies that the CTR criteria supersede the Basin Plan objectives.

The Central Valley Water Board does not have discretion to only use the CTR criteria in this case, because the footnote cited by the Discharger does not mean the CTR criteria supersede the Basin Plan objective. The purpose of footnote b is to identify situations where the CTR criteria do not apply, not to imply that the CTR criteria supersede Basin Plan water quality objectives. Since both objectives apply, the more stringent objective must be used to calculate the WQBELs. The SIP states in footnote 4 that, "*If a water quality objective and CTR criterion are in effect for the same priority pollutant, the more stringent of the two applies.*" In this case, for calculating WQBELs, the Delta site-specific objective results in more stringent WQBELs and must be used.

Lead. Central Valley Water Board staff concurs that water quality-based effluent limits are not required for lead. Although the maximum ambient background concentration exceeds the CTR chronic criterion, effluent lead data is insufficient to conduct the RPA.

SIP Section 2.4.2 states that the Minimum Level (ML) is the lowest quantifiable concentration in a sample based on the proper application of all method-based analytical procedures and the absence of any matrix interferences.

- a) Required MLs are listed in Appendix 4 of the SIP. Where more than one ML is listed in Appendix 4, the discharger may select any one of the cited analytical methods for compliance determination. The selected ML used for compliance determination is referred to as the Reporting Level (RL).
- b) A Reporting Level can be lower than the Minimum Level in Appendix 4 only when the discharger agrees to use a Reporting Level that is lower than the Minimum Level listed in Appendix 4. The Central Valley Water Board and the Discharger have no agreement to use a Reporting Limit lower than the listed Minimum Levels.
- c) SIP Section 1.2 requires that the Regional Board use all available, valid, relevant, representative data and information, as determined by the Regional Board, to implement the SIP. SIP Section 1.2 further states that the Regional Board has the discretion to consider if any data are inappropriate or insufficient for use in implementing the SIP.
- d) Data reported below the Minimum Level indicates the data may not be valid due to possible matrix interferences during the analytical procedure.

e) Further, SIP Section 2.4.5 (Compliance Determination) supports the insufficiency of data reported below the Minimum Level or Reporting Level. In part it states, "Dischargers shall be deemed out of compliance with an effluent limitation, for reporting and administrative enforcement purposes, if the concentration of the priority pollutant in the monitoring sample is greater than the effluent limitation and greater than or equal to the RL." Thus, if submitted data is below the Reporting Limit, that data cannot be used to determine compliance with effluent limitations.

f) Data reported below the Minimum Level is not considered valid data for use in determining Reasonable Potential. Therefore, in accordance with Section 1.2 of the SIP, the Central Valley Water Board has determined that data reported below the Minimum Level is inappropriate and insufficient to be used to determine Reasonable Potential.

g) In implementing its discretion, the Central Valley Water Board is not finding that Reasonable Potential does not exist; rather the Central Valley Water Board cannot make such a determination given the invalid data. Therefore, the Central Valley Water Board will require additional monitoring for such constituents until such time a determination can be made in accordance with the SIP policy.

SIP Appendix 4 cites several Minimum Levels (ML) for lead. The lowest applicable ML cited for lead is 0.5 µg/L. The Discharger used an analytical method that was more sensitive than the minimum level required by the SIP. The effluent results were all estimated values (i.e., DNQ). Therefore, the submitted effluent lead data is inappropriate and insufficient to determine reasonable potential under the SIP.

The upstream receiving water concentration of 1.5 µg/L does exceed the CTR chronic criterion, however, Section 1.3, Step 6 of the SIP states that if the receiving water concentration exceeds the criteria and the pollutant is detected in the effluent, an effluent limitation is required. However; as discussed in detail above, insufficient effluent data is available at this time to justify establishing an effluent limitation for lead.

Section 1.3, Step 8 of the SIP allows the Central Valley Water Board to require additional monitoring for a pollutant in place of an effluent limitation if data are unavailable or insufficient. Instead of limitations, additional monitoring has been established for lead in both the effluent and the receiving water. Should monitoring results indicate that the discharge has the reasonable potential to cause or contribute to an exceedance of a water quality standard, the proposed Order may be reopened and modified by adding an appropriate effluent limitation.

Discharger Comment No. 13. THM Limits - Provision IV.A.I.

The Discharger requested to modify the THM Limits to be consistent with the SIP methodology.

The Discharger had two comments in this item:

- a) The effluent limits in the permit, Table 6, are not equal to the values calculated within the Fact Sheet on pages F-54 and F-56 and are not consistent with the values derived using SIP methodology specified in the SIP.
- b) The proposed monthly limit for chlorodibromomethane should be 8 instead of 8.0 to be consistent with the number of significant figures for the other effluent limits.

RESPONSE: The Discharger points out that the effluent limitations for chlorodibromomethane and dichlorobromomethane in Table 6 of the Limitations and Discharge Requirements and the Fact Sheet are not consistent. The effluent limitations in Table 6 are correct. The Fact Sheet included typos, which have been corrected. The Discharger also proposes the effluent limits should be calculated as average weekly and average monthly effluent limits. See Response to Discharger Comment No. 8 regarding the use of average weekly effluent limits for CTR constituents. Finally, the Discharger's comment regarding the proper use of significant figures for the average monthly effluent limit for chlorodibromomethane is not correct. The effluent limits have been established using two significant figures, so the average monthly effluent limit for chlorodibromomethane is appropriately established with two significant figures as 8.0 µg/L.

Discharger Comment No. 14. Total Residual Chlorine - Provision IV.A.I.e

The Discharger requested to remove the Total Residual Chlorine Limits if no RP, or if RP, maintain previous limits as monthly and weekly average Limits.

The Discharger had two comments in this item:

- a) There is no reasonable potential analysis demonstrating that such limits are required for this discharge.
- b) There is no explanation for this change in the limits.

RESPONSE: The Fact Sheet failed to include the rationale for the reasonable potential analysis and calculation of WQBELs for total residual chlorine. The WQBELs for total residual chlorine were revised slightly from the previous permit to be consistent with USEPA's National Ambient Water Quality Criteria for Chlorine. The proposed Order has been updated to include this rationale in Section IV.C.3.d.iii of the Fact Sheet, as shown in underline/strikeout format below:

iii. Chlorine, Total Residual

- (a) **WQO.** USEPA developed NAWQC for protection of freshwater aquatic life for chlorine residual. The recommended 4-day average (chronic) and 1-hour average (acute) criteria for chlorine residual are 0.011 µg/L and 0.019 µg/L, respectively. These criteria are protective of the Basin Plan’s narrative toxicity objective.
- (b) **RPA Results.** Federal regulations at 40 C.F.R. §122.44(d)(1)(i) requires that, “Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, 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.” For priority pollutants, the SIP dictates the procedures for conducting the RPA. Ammonia is not a priority pollutant. Therefore, the Central Valley Water Board is not restricted to one particular RPA method. Due to the site-specific conditions of the discharge, the Central Valley Water Board has used best professional judgment in determining the appropriate method for conducting the RPA for this non-priority pollutant constituent.

USEPA’s September 2010 NPDES Permit Writer’s Manual, page 6-30, states, “State implementation procedures might allow, or even require, a permit writer to determine reasonable potential through a qualitative assessment process without using available facility-specific effluent monitoring data or when such data are not available...A permitting authority might also determine that WQBELs are required for specific pollutants for all facilities that exhibit certain operational or discharge characteristics (e.g., WQBELs for pathogens in all permits for POTWs discharging to contact recreational waters).” USEPA’s TSD also recommends that factors other than effluent data should be considered in the RPA, “When determining whether or not a discharge causes, has the reasonable potential to cause, or contributes to an excursion of a numeric or narrative water quality criterion for individual toxicants or for toxicity, the regulatory authority can use a variety of factors and information where facility-specific effluent monitoring data are unavailable. These factors also should be considered with available effluent monitoring data.” With regard to POTWs, USPEA recommends that, “POTWs should also be characterized for the possibility of chlorine and ammonia problems.” (TSD, p. 50)

The Discharger uses chlorine for disinfection, which is extremely

toxic to aquatic organisms. Although the Discharger uses a sulfur dioxide process to dechlorinate the effluent prior to discharge to Old River, the existing chlorine use and the potential for chlorine to be discharged provides the basis for the discharge to have a reasonable potential to cause or contribute to an in-stream excursion above the NAWQC.

(c) **WQBELs.** The USEPA *Technical Support Document for Water Quality-Based Toxics Control* [EPA/505/2-90-001] contains statistical methods for converting chronic (4-day) and acute (1-hour) aquatic life criteria to average monthly and maximum daily effluent limitations based on the variability of the existing data and the expected frequency of monitoring. However, because chlorine is an acutely toxic constituent that can and will be monitored continuously, an average 1-hour limitation is considered more appropriate than an average daily limitation. This Order contains a 4-day average effluent limitation and 1-hour average effluent limitation for chlorine residual of 0.011 µg/L and 0.019 µg/L, respectively, based on USEPA's NAWQC, which implements the Basin Plan's narrative toxicity objective for protection of aquatic life.

(d) **Plant Performance and Attainability.** Based on the analysis of the effluent, the Central Valley Water Board concludes that immediate compliance with these effluent limitations is feasible.

Discharger Comment No. 15. Total Dissolved Solids (TDS) Mass Limit - Provision IV.A.I.f.

The Discharger requested to maintain the TDS mass limit from the previous permit as an interim limit.

The Discharger commented that the proposed Permit maintains this performance-based limit, but now applies it as a final effluent limitation without adequate justification.

RESPONSE: In previous Order R5-2007-0036-01 an interim TDS loading limit was established due to antidegradation concerns. In the previous permit the Discharger requested an increase in discharge flow from 9 MGD to 16 MGD. A condition of the increase was that the salt loading would remain the same, which satisfied the antidegradation requirements. The Discharger is able to maintain its current salt loading as the discharge flows increase, because it is expanding the use of lower salinity water supplies to support the growth in the City of Tracy. In the proposed Order, the TDS loading limit was changed from an interim effluent limit to a final effluent limit. The TDS loading limit was originally established to satisfy antidegradation requirements, therefore, the effluent limits should be final effluent

limits. Interim effluent limits should only be included in NPDES permits when a time schedule results in a delay in the implementation of final effluent limits. In this case, the TDS loading limits must remain in effect to comply with antidegradation requirements and therefore are not interim effluent limits that will be replaced by final effluent limits at a future date.

Discharger Comment No. 16. Diazinon, Chlorpyrifos, and Methylmercury Limits - Provision IV.A.I.j. and 1.

The Discharger requested to remove the effluent limits for diazinon, chlorpyrifos, and methylmercury until reasonable potential has been demonstrated for the City's discharge.

The Discharger had two comments:

- a) There is no data or no reasonable potential analysis for these constituents.
- b) The WLAs could be included as receiving water limitations instead of effluent limits. Since an RP analysis cannot be done, section 122.44 (d) cannot be used to justify inserting WLAs as effluent limits. The Discharger is referencing the Port of Stockton permit as an example for this suggestion.

RESPONSE: CWA section 301(b)(1)(C) requires effluent limitations necessary to meet water quality standards. 40 CFR section 122.44(d)(1) requires the achievement of water quality standards as established in CWA section 303, including State narrative criteria for water quality. In pertinent part, 40 CFR section 122.44(d)(1)(vii) states that when developing water quality based effluent limits that the permitting authority shall ensure that (1) the level of water quality to be achieved by limits on point sources established under this paragraph is developed from, and complies with all applicable water quality objectives and (2) effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation. A plain reading of the regulation demonstrates that these are two separate independent requirements. Consequently, developing water quality based effluent limits to be consistent with any available wasteload allocation is a separate and independent requirement from ensuring that the level of water quality to be achieved is developed from, and complies with all applicable water quality objectives.

This plain reading of the regulation is supported by the legislative history of 40 CFR section 122.44(d)(1):

“Today’s rulemaking adds seven new paragraphs to 122.44(d)(1). The subparagraphs describe the procedures for determining whether a discharge is causing or contributing to an excursion above a water quality criterion, identify those permits that must have water quality based effluent limits, and describe seven principles for developing water quality based effluent limits.

The final change to 122.44(d)(1) is subparagraph (vii). This subparagraph describes two requirements that the permitting authority must use to derive water quality based effluent limits. The first requirement provides that water quality based effluent limits shall be derived from water quality standards The second requirement in subparagraph (vii) for deriving water quality-based effluent limits, is that the water quality-based effluent limits must be consistent with wasteload allocations (WLAs) developed and approved in accordance with 40 CFR section 130.7, if a WLA is available for the discharger. A wasteload allocation is defined at 40 CFR 130.2 and reflects the portion of a receiving water's loading capacity that is allocated to a point source. The requirement to use approved wasteload allocations for water quality-based permit limits is implied in current §122.44(d) because paragraph (d) requires effluent limits to meet water quality standards. Today's language clarifies EPA's existing regulations by stating that when WLAs are available, they must be used to translate water quality standards into NPDES permit limits Although paragraph (vii) requires the permitting authority to use a wasteload allocation if one has been approved under Part 130, today's regulations do not allow the permitting authority to delay developing and issuing a permit if a wasteload allocation has not already been developed and approved." (54 FR 23868-01, 23879.)

These principles are further demonstrated in subsequent decisions of the Environmental Appeals Board. See, e.g., *In Re: Ketchikan Pulp Company*, 6 EAD 675 (E.A.B. 1996) noting that "In decisions regarding specific NPDES permit limitations, permit writers must assure consistency with any TMDL established for a particular water body" (citing 40 CFR section 122.44(d)(1)(vii)(B)).

For example, in *In Re: City of Moscow, Idaho*, 10 EAD 135 (E.A.B. 2001) further notes that 40 CFR section 122.44(d)(1)(vii)(B) requires consistency with the requirements of any available wasteload allocation and states "effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both be consistent with the assumptions and requirements of any available wasteload allocation. WLAs, although not permits, still require translation into permits, namely, water quality based effluent limits." The decision notes that while section 122.44(d)(1)(vii) prescribes minimum requirements for developing WQBELs, it does not prescribe detailed procedures for their development. The decision also notes that the lack of a detailed procedure for establishing permit limits from available WLAs was intended to give the permitting authority the flexibility to determine the appropriate procedures for developing water quality-based effluent limits. In citing the legislative history, the same opinion notes that the intent of Section 122.44(d)(1)(vii) is to ensure that when WLAs are available, they are used to translate water quality standards into NPDES permit limits.

In response to the Discharger's reference to the Port of Stockton (Metropolitan Stevedore) permit, Central Valley Water Board staff believe that the two facilities are remarkably different. In the Port of Stockton permit, the basis for not establishing WQBELs in that case was that the Facility did not discharge methylmercury to the

Delta based on the de minimis discharge and the type of materials handled. That Tentative Order notes that the Facility may have indirect discharges during the loading and unloading of materials via an overhead conveyor system and that control and/or treatment of the de minimis discharges to meet numeric effluent limitations would be impractical. By contrast, Central Valley Water Board staff considers the discharge of treated wastewater from a tertiary facility to be a discharge that can be reasonably and feasibly monitored, controlled, and treated.

Discharger Comment No. 17. Interim Mercury Limit - Provision IV.A.2.a.

The Discharger requested to maintain the current Interim Mercury Limit and make other requested changes.

The Discharger had four main comments in this item:

- a) A 41 grams/year limit represents an 82% reduction from the earlier total mercury limit of 0.042 pounds/month.
- b) The Permit fails to provide an adequate reason/justification for the change.
- c) The citations in the new limit to methylmercury final limits should be removed since there is no reasonable potential for methylmercury.
- d) The citations in this section to Section IV .A.1.i. are incorrect, and should be IV .A.1.j, if that methylmercury limit is maintained.

RESPONSE: Central Valley Water Board staff does not concur. The interim effluent limitations for total mercury have been developed in accordance with the Basin Plan's Delta Mercury Control Program. The Basin Plan states that, "*During Phase 1, all facilities listed in Table IV-7B shall limit their discharges of inorganic (total) mercury to facility performance-based levels. The interim inorganic (total) mercury effluent mass limit is to be derived using current, representative data and shall not exceed the 99.9th percentile of 12-month running effluent inorganic (total) mercury loads (lbs/year).*" (Basin Plan, pg. IV-33.14) The Fact Sheet in Section IV.E provides the rationale for development of the total mercury interim effluent limitations.

With regard to the need for methylmercury effluent limitations, the Fact Sheet adequately discusses the reasonable potential analysis as follows, "Section 1.3 of the SIP states, '*The RWQCB shall conduct the analysis in this section for each priority pollutant with an applicable criterion or objective, **excluding priority pollutants for which a Total Maximum Daily Load (TMDL) has been developed, to determine if a water quality-based effluent limitation is required in the discharger's permit.***' (emphasis added) Although a RPA is not required, based on the available effluent and receiving water methylmercury data, it appears the discharge is causing or contributing to an exceedance of the concentration of methylmercury in water to meet the site-specific fish tissue objectives in the Basin Plan. The maximum observed effluent methylmercury concentration was 0.2 ng/L, and the maximum ambient methylmercury concentration was 0.3 ng/L."

Finally, the interim total mercury effluent limitations apply in lieu of the final methylmercury effluent limitation until 31 December 2030. The tentative Order correctly cited the section of the final methylmercury effluent limitation, which is Section IV.A.1.i.

Discharger Comment No. 18. Clarification of Language Necessary - Receiving Water Limitations, Paragraph. A, Surface Water Limitations

The Discharger requested changes to Section V.A. The Discharger proposed the following changes to Provision V .A as shown in underline/strikeout format.

A. Surface Water Limitations

Receiving water limitations are based on water quality objectives contained in the Basin Plan and are a required part of this Order. However, a receiving water condition not in conformance with the limitation is not necessarily a violation of this Order. The Central Valley Water Board may require an investigation to determine cause and culpability prior to asserting a violation has occurred. The discharge shall not cause the following in Old River:

The Discharger also proposed to incorporate this language into all permits that contain Receiving Water Limitations to be consistent with Regional Board Order No R5-2011-0005.

RESPONSE: Central Valley Water Board staff does not concur. The new language is unnecessary. The existing language, "*The discharge shall not cause the following in Old River,*" makes it clear that there is only a permit violation if the receiving water limitation is exceeded as a result of the discharge.

Discharger Comment No. 19. Compliance Determination Language - Section VII., Paragraphs. D., E. and G., Monitoring and Reporting Program (MRP), Section X.B.4- Remove or Modify Problematic Compliance Determination Language

Section VII. of the draft Permit prejudices what constitutes a violation of the Permit, without providing an enforcement hearing, due process, or the opportunity to present contrary evidence or defenses, and unlawfully presumes that the permittee "will be considered out of compliance" or "is in violation," even though there may be an explanation or excuse for such non-compliance (see e.g., Standard Provisions D.I.G. and H.) All such references prejudging "violations" must be removed and can be replaced with a more generic "may be deemed out of compliance" or "may be grounds for an enforcement action." The compliance determination language belongs in the Enforcement Policy, not in an individual NPDES permit. Reliance on the permit template

issued by the State Water Board is not acceptable as this is not a regulation, merely a guidance document able to be readily changed.

The Discharger alternatively suggested modifying the Compliance Determination section with the following language below:

Permit, VII.

- D. If the 7-day media.'1 of total coliform organisms does not exceeds a most probable number (MPN) of 23 per 1 00 milliliters, the Permittee ~~Discharger~~ will be considered ~~out of~~ to be in compliance.
- E. If the Permittee does not have Any excursions above the 1-hour or 4-day average total residual chlorine effluent limitations is a violation, then the Permittee will be considered to be in compliance.
- G. For purposes of reporting and administrative enforcement by the Central Valley Water Board and the State Water Board, the ~~Discharger~~ Permittee shall not be deemed out of compliance with the effluent limitations if the concentration of the priority pollutant in the monitoring sample is ~~greater~~ less than or equal to the effluent limitation and ~~greater less than or equal to~~ greater less than or equal to the reporting level (RL).
- MRP, X.B.4. For purposes of reporting and administrative enforcement by the Central Valley Water Board and the State Water Board, the ~~Discharger~~ Permittee shall not be deemed out of compliance with effluent limitations if the concentration of the priority pollutant in the monitoring sample is ~~greater~~ less than or equal to the effluent limitation and ~~greater less than or equal to~~ greater less than or equal to the reporting level (RL).

RESPONSE: Central Valley Water Board staff does not concur. The purpose of the compliance determination language is to provide the Discharger the rationale that will be used to evaluate compliance with the permit. The compliance determination language is clear and does not prevent an enforcement hearing, due process, or the opportunity to present contrary evidence or defenses.

Discharger Comment No. 20. Add New Reopener to Adjust Monitoring based on Regional Monitoring Programs - Section VI.C. Reopener Provisions

The Discharger requested changes to insert a reopener to allow for monitoring requirements to be modified based on the findings of the regional monitoring program review.

RESPONSE: Central Valley Water Board staff concurs. A new reopener provision has been added to Section VI.C.1 of the Limitations and Discharge Requirements as shown in underline/strikeout format below:

h. Regional Monitoring Program. The Central Valley Water Board is developing a Regional Monitoring Program for the Sacramento-San Joaquin Delta. This Order may be reopened to modify the receiving water monitoring requirements to implement the Regional Monitoring Program.

Discharger Comment No. 21. Sample Types - MRP, Section V.A.2. Page E-9

The Discharger requested that Flow Through samples be added to Sample Types.

RESPONSE: Central Valley Water Board staff concurs. Section V.A.2 of the Monitoring and Reporting Program (Attachment E) has been modified as shown in underline/strikeout format below:

2. Sample Types – The Discharger may use flow-through, static non-renewal, or static renewal testing. For static non-renewal and static renewal testing, the samples shall be flow proportional 24-hour composites and shall be representative of the volume and quality of the discharge. The effluent samples shall be taken at the effluent monitoring location EFF-001.

Discharger Comment No. 22. Test Species- MRP, Section V.A.3. Pg.E-9

The Discharger requested that this section be clarified to state that the City can use either fathead minnows or rainbow trout, and that the same species need not be used for the duration of the permit.

RESPONSE: Central Valley Water Board staff does not concur. The proposed Order requires acute toxicity testing in accordance with USEPA's Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, October 2002 (EPA-821-R-02-012, Fifth Edition). USEPA's acute toxicity testing method allows the use of either the test species *Pimephales promelas* (fathead minnow) or *Oncorhynchus mykiss* (rainbow trout). Salmon and steelhead inhabit the Sacramento-San Joaquin Delta and Old River. Therefore, to ensure protection of these sensitive species, the proposed Order requires the use of *Oncorhynchus mykiss* (rainbow trout) as the test species.

Discharger Comment No. 23. Dilutions - MRP, Section V.B.7. Pg.E-10

The Discharger requested that the language in the parentheses ("unless the receiving water is toxic") should be removed. If the receiving stream is more toxic than the City's effluent, then the City would like the opportunity to illustrate that toxicity through the Chronic Toxicity test.

RESPONSE: Central Valley Water Board staff does not concur. Using toxic receiving water as the diluent for the chronic whole effluent toxicity (WET) testing would not meet the objectives of the test. Section 7.1.2 of USEPA's Chronic WET Method Manual¹ provides guidance for acceptable dilution water, which states, "*An acceptable dilution water is one which is appropriate for the objectives of the test; supports adequate performance of the test organisms with respect to survival, growth, reproduction, or other responses that may be measured in the test (i.e., consistently meets test acceptability criteria for control responses); is consistent in quality; and does not contain contaminants that could produce toxicity.*" (emphasis added)

When conducting the chronic WET testing, the proposed Order requires a dilution series and two controls, which includes a laboratory water control and a receiving water control. The proposed Order requires the receiving water to be used as the diluent for the dilution series. However, if the receiving water control is statistically different than the laboratory water control (i.e., toxic), the proposed Order allows the use of laboratory water as the diluent for the dilution series. The Discharger would still be required to conduct the chronic WET testing with a dilution series and the two controls to confirm the receiving water is toxic.

Discharger Comment No. 24. Bottom Deposits - MRP, Section VIII.A.I.c.

The Discharger requested that that this requirement be removed, or conditioned to "if visible" because the City has difficulty obtaining information on the presence or absence of bottom deposits when the bottom of the River is rarely visible.

RESPONSE: Central Valley Water Board staff concurs and have modified the Order accordingly.

Discharger Comment No. 25. Sanitary Sewer Overflows - MRP Section X.D.4, and Fact Sheet at F-97

The Discharger suggested the following changes to MRP and Fact Sheet:

a) The Monitoring and Reporting Program (MRP) should not contain a prohibition on sanitary sewer overflows. Section X.D.4 states that "Sanitary sewer overflows are prohibited by this Order." This language should be removed as unnecessary for the MRP.

b) In addition, on page F -97 of the redline, it says in the collection system section that "The Discharger must comply with this Order and separately with the requirements of

¹ *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, Fourth Edition*, EPA/821-R-02-013, October 2002.

the General Order, which are incorporated [sic] herein by reference." This separate state law only permit should not be incorporated by reference, which would allow citizen suits to enforce a non NPDES permit. This sentence on page F-97 should be revised to say "not incorporated"

RESPONSE: Central Valley Water Board staff concurs and have modified the Order accordingly.

Discharger Comment No. 26. Pretreatment Budget - MRP, Section X.D.7.e.xii., Pg. E-24

The Discharger requested to remove requirement for annual pretreatment budget. The Discharger also requested that the Regional Board provide an explanation of the need for and assess the burden of providing such information as required by, inter alia, Water Code section 13267(b).

RESPONSE: The pretreatment program reporting requirements in the proposed Order are based on USEPA recommendations². For the development of a pretreatment program, dischargers are required to provide a description of the funding levels and full- and part-time manpower available to implement the pretreatment program (40 CFR 403.9(b)(4)). The purpose of providing information regarding the annual pretreatment program budget is to ensure that funding is being authorized to adequately implement the program.

Discharger Comment No. 27. Incorrect Title - Attachment I, Table I-1, Incorrect Title

The Discharger requested to correct the Title of Table 1-1. Table I-1 is titled "priority pollutants" when it includes things like flow and temperature and other constituents that are not priority pollutants. This title should be modified to say "Priority Pollutants and Other Constituents of Concern."

RESPONSE: Central Valley Water Board staff concurs and corrected the title.

² Standard Pretreatment Implementation Requirements for Municipal NPDES Permits
http://www.epa.gov/region9/water/pretreatment/files/pretreatment_program_implementation_permit_conditions.pdf

Discharger Comment No. 28. Effluent and Receiving Water Study and Requiring Detection Levels below ML Values - MRP, Section X.D.S., and Attachment I, Section III.B.

The Discharger requested to remove New Attachment I as well as all references to this Attachment elsewhere in the Permit as unjustified and unnecessary.

RESPONSE: Central Valley Water Board staff does not concur that Attachment I should be removed. The Effluent and Receiving Water Characterization Study is necessary to conduct a reasonable potential analysis for the next permit renewal. Attachment I provides the requirements for conducting the study to ensure sufficient information is available for the next permit renewal. However, Central Valley Water Board staff does concur that some changes should be made in Attachment I to be consistent with the monitoring requirements of the SIP. Table I-1 has been modified by removing the last column, titled "Suggested Test Methods." In addition, the third column has been renamed, "Maximum Reporting Level", and the cells include the maximum required reporting levels for priority pollutant constituents based on the minimum levels required in Appendix 4 of the SIP. Furthermore, the general monitoring provisions and reporting requirements contained in the Monitoring and Reporting Program (Attachment E) are applicable to the monitoring required in Attachment I. Therefore, Attachment I has been modified by removing Section III. *Additional Study Requirements.*

Discharger Comment No. 29. Dioxin and Furan Sampling - MRP, Section X.D.S., and Attachment J

The Discharger requested to remove New Attachment J as unjustified and unnecessary. If retained, Attachment J should be modified to include application of BEFs factors.

The Discharger had two main comments in this item:

- a) Adding this new Attachment J twelve years after the effective date of the 2000 SIP is not authorized or justified. The Discharger commented that Dioxin monitoring was required under the SIP, within one year of the effective date of that policy, which was adopted in 2000. Then, this monitoring was just to be for three years (ending in 2004) at which point, the SWRCB and RWQCB were to assess the data and determine if further monitoring was necessary.
- b) Proper interpretation of dioxin and furan congener data requires application of the use of Bioaccumulation Equivalency Factors (BEFs).

RESPONSE: Central Valley Water Board staff does not concur. The SIP requires periodic monitoring of priority pollutant constituents, as stated in Section 1.3, "*The RWQCB shall require periodic monitoring (at least once prior to the issuance and reissuance of a permit) for pollutants for which criteria or objectives apply and for which no effluent limitations have been established,*" The Discharger also contends that proper interpretation of dioxin and furan congener data requires application of

the use of Bioaccumulation Equivalency Factors (BEFs). Attachment I and Attachment J only include the monitoring requirements for dioxin and furan congeners. The attachments do not discuss how the data will be evaluated, but the Discharger's comment is noted.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (USEPA) COMMENTS

USEPA Comment A. Reasonable Potential Analysis for Iron, Manganese, and Aluminum

USEPA requested that the permit must impose effluent limitations for iron, manganese, and aluminum. USEPA had three main comments in this item:

a) The receiving water concentrations exceeded the applicable water quality objectives. Therefore, it is appropriate to conclude these discharges contribute to an excursion above applicable water quality standards and that reasonable potential exists, even though effluent concentrations for iron, manganese, and aluminum do not exceed the applicable water quality objectives.

b) It is appropriate for the Regional Board to follow existing State and federal guidance. The State has not established an alternative procedure for conducting reasonable potential analysis for non-priority pollutants still it is appropriate for the Regional Board followed EPA's Technical Support Document for Water Quality based Toxics Control (TSD) reasonable potential analysis procedure, which would result in a finding of reasonable potential.

c) Iron and aluminum effluent limits cannot be eliminated due to antibacksliding and antidegradation requirements.

RESPONSE:

Reasonable Potential Analysis. Central Valley Water Board staff does not concur that there is reasonable potential for the discharge to cause or contribute to an in-stream exceedance of the applicable water quality objectives for aluminum, iron, and manganese. Therefore, in accordance with 40 CFR 122.44, water quality-based effluent limitations are not required.

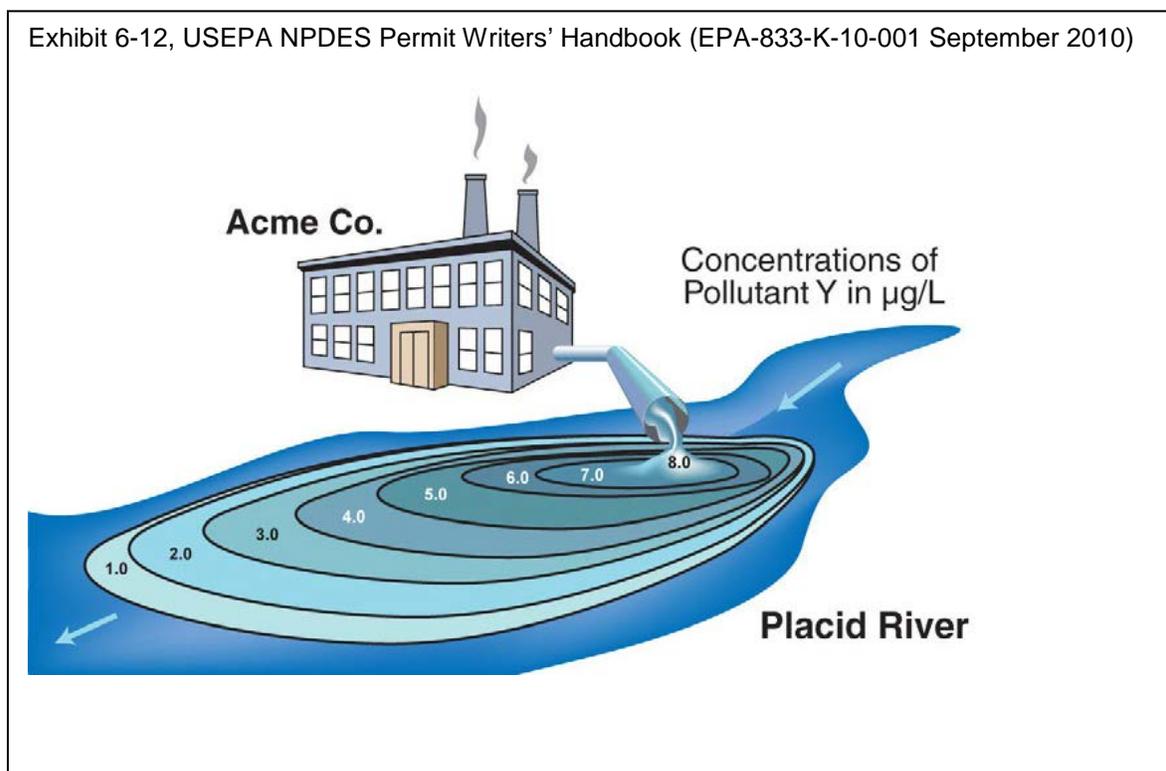
For priority pollutants, the SIP dictates the procedures for conducting the reasonable potential analysis (RPA). Aluminum, iron, and manganese are not priority pollutant constituents. Therefore, the Central Valley Water Board is not restricted to one particular RPA method. Due to the site-specific conditions of the discharge, the Central Valley Water Board has used best professional judgment in determining the appropriate method for conducting the RPA for these non-priority pollutant constituents. Central Valley Water Board staff utilized the RPA method

recommended in USEPA's Technical Support Document for Water Quality based Toxics Control (TSD), which is explained in USEPA's NPDES Permit Writers' Manual³.

For conducting the RPA, USEPA recommends in its NPDES Permit Writers' Manual the use of a steady-state mass-balance approach to determine the expected critical downstream receiving water for comparison to the applicable water quality objective. Section 6.3.2.1 of the NPDES Permit Writer's Manual states, "*For many pollutants such as most toxic (priority) pollutants, conservative pollutants, and pollutants that can be treated as conservative pollutants when near-field effects are of concern, if there is rapid and complete mixing in a river or stream, the permit writer could use a simple mass-balance equation to model the effluent and receiving water.*" (pg. 6-24) In this case, however, under critical conditions the discharge does not undertake a rapid and complete mix in the receiving water. In cases of incomplete mixing, the NPDES Permit Writers' Manual recommends the following, "*To determine whether there is reasonable potential in an incomplete mixing situation, the permit writer would compare the projected concentration of the pollutant of concern at the edge of the regulatory mixing zone or after accounting for the available dilution allowance, with the applicable water quality criterion.*" (Section 6.3.2.3, pg. 6-29)

Exhibit 6-12 in the NPDES Permit Writers' Manual (see below) depicts an example of an incompletely-mixed discharge and how the appropriate receiving water concentration may be determined using an incomplete mixing water quality model. USEPA recommends using the in-stream pollutant concentration at the edge of the regulatory mixing zone. In the example, the exhibit shows possible regulatory mixing zones and examples of the pollutant concentrations at the edge of each mixing zone. The proposed Order for the City of Tracy does not allow mixing zones for aluminum, iron, or manganese. Therefore, the projected constituent concentration at the edge of the regulatory mixing zone would be the projected maximum effluent concentration at the end-of-pipe (i.e., no dilution allowed). In USEPA's example, it would be the receiving water concentration shown as "8.0".

³ USEPA NPDES Permit Writers' Handbook (EPA-833-K-10-001 September 2010)



As recommend by the TSD, the projected maximum effluent concentrations were calculated using the TSD's Table 3-1, *Reasonable Potential Multiplying Factors: 99% Confidence Level and 99% Probability Basis*. The projected maximum effluent concentrations for aluminum, iron, and manganese are well below the applicable water quality objectives. Therefore, using USEPA's recommended RPA method for incompletely-mixed discharges results in a finding of no reasonable potential.

Regardless, the most stringent objectives for aluminum, iron, and manganese are the Secondary MCLs, which are derived from human welfare considerations (e.g., taste, odor, laundry staining). Although the receiving water contains these metals exceeding the Secondary MCL, the effluent concentrations are consistently less than the concentrations in the receiving water and below the Secondary MCLs. The discharge is actually lowering the concentrations in the receiving water. Therefore, the Central Valley Water Board finds the discharge does not have reasonable potential to cause or contribute to an exceedance in the receiving water and the Facility is adequately controlling the discharge of these metals. Water quality-based effluent limitations are not required per federal regulations and clearly unnecessary to protect the beneficial uses of the receiving water.

Anti-backsliding Requirements. Central Valley Water Board staff also does not concur that the removal of the effluent limitations for aluminum and iron do not meet antibacksliding and antidegradation requirements. Since adoption of the previous permit, the Discharger has upgraded to tertiary filtration that provides improved treatment and has decreased the loading of aluminum and iron that is discharged to

the receiving water. Removal of the effluent limitations meets the antibacksliding exceptions in Clean Water Act (CWA) section 402(o)(1) and 402(o)(2), as follows.

CWA section 402(o)(1) and 303(d)(4). CWA section 402(o)(1) specifies that, in the case of effluent imitations established on the basis of CWA section 301(b)(1)(C) (i.e., WQBELs), a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except in compliance with CWA section 303(d)(4). The effluent limitations for aluminum and iron established in previous Order R5-2007-0036-01 are WQBELs and may be relaxed if the requirements of CWA section 303(d)(4) are satisfied.

CWA section 303(d)(4) has two parts: paragraph (A) which applies to nonattainment waters and paragraph (B) which applies to attainment waters. For attainment waters, CWA section 303(d)(4)(B) specifies that a limitation based on a water quality standard may be relaxed where the action is consistent with the antidegradation policy. The 303(d) listings for Old River and the Sacramento-San Joaquin Delta, as described in section III.D.1 of this Fact Sheet, do not include aluminum and iron. Thus, the receiving water is an attainment water for these constituents⁴. As discussed above, the Facility improvements result in decreased loadings of these pollutants, thus removal of WQBELs for aluminum and iron is consistent with the antidegradation provisions of 40 CFR 131.12 and State Water Board Resolution No. 68-16. Therefore, the removal of these effluent limitations meet the exception to the anti-backsliding requirements under CWA section 402(o)(1) and 303(d)(4).

CWA section 402(o)(2). Previous Order R5-2007-0036-01 included WQBELs for aluminum and iron. Based on tertiary effluent data for these constituents, the discharge does not demonstrate reasonable potential, therefore, the effluent limits has been removed. In accordance with section 402(o)(2) of the CWA the effluent limits may be relaxed if, "*There have been material and substantial alterations or additions to the permitted facility which justify the application of less stringent effluent limitations.*" In this case, the Facility has been upgraded to tertiary filtration since adoption of the last permit. The effluent has demonstrated consistently low concentrations of aluminum and iron since the Facility upgrades, which results in a finding of no reasonable potential. Therefore, the removal of these effluent limitations meet the exception to the anti-backsliding requirements under CWA section 402(o)(2).

⁴ "*The exceptions in Section 303(d)(4) address both waters in attainment and those not in attainment, i.e. waters on the Section 303(d) list.*" State Water Board Order WQ 2001-06

USEPA Comment B. Compliance Schedule for Methylmercury

USEPA commented that the interim compliance schedule milestones are not sufficient to meet the requirements at 40 CFR 122.47 (a) (3), which provides specific examples of interim requirements such as: “(a) submit a complete Step 1 construction grant (for POTWs); (b) let a contract for construction of required facilities; (c) commence construction of required facilities; (d) complete construction of required facilities.” The regulations at 40 CFR 122.47(a)(3)(ii) allow progress reports to be included if the interim requirements cannot be readily divisible into 1-year increments, but reports alone are not acceptable as interim requirements. USEPA suggests that the recently adopted compliance schedules for the Cities of Mt. Shasta and Dunsmuir provide the appropriate mix of action-specific milestones and reporting milestones, consistent with federal regulatory requirements. USEPA also comments that the proposed compliance date is not justified.

RESPONSE: The Delta Mercury Control Program is composed of two phases. Phase 1 spans from 20 October 2011 through the Phase I Delta Mercury Control Program Review, expected to conclude by October 2020. Phase 1 emphasizes studies and pilot projects to develop and evaluate management practices to control methylmercury. Phase 1 includes provisions for: implementing pollution minimization programs and interim mass limits for inorganic (total) mercury point sources in the Delta and Yolo Bypass; controlling sediment-bound mercury in the Delta and Yolo Bypass that may become methylated in agricultural lands, wetland, and open-water habitats; and reducing total mercury loading to San Francisco Bay, as required by the Water Quality Control Plan for the San Francisco Bay Basin.

At the end of Phase 1, the Central Valley Water Board will conduct a Phase 1 Delta Mercury Control Program Review that considers: modification of methylmercury goals, objectives, allocations and/or the Final Compliance Date; implementation of management practices and schedules for methylmercury controls; and adoption of a mercury offset program for dischargers who cannot meet their load and waste load allocations after implementing all reasonable load reduction strategies. The review also will consider other potential public and environmental benefits and negative impacts (e.g., habitat restoration, flood protection, water supply, fish consumption) of attaining the allocations. The fish tissue objectives, the linkage analysis between objectives and sources, and the attainability of the allocations will be re-evaluated based on the findings of Phase 1 control studies and other information. The linkage analysis, fish tissue objectives, allocations, and time schedules shall be adjusted at the end of Phase 1, or subsequent program reviews, if appropriate.

Phase 2 begins after the Phase 1 Delta Mercury Control Program Review or by 20 October 22, whichever occurs first, and ends in 2030. During Phase 2, dischargers shall implement methylmercury control programs and continue inorganic (total) mercury reduction programs. Compliance monitoring and implementation of upstream control programs also shall occur in Phase 2.

USEPA was involved throughout the process of developing the Delta Mercury Control Program and supported the phased approach. In an 18 May 2011 comment letter to the State Water Resources Control Board (State Water Board), Ms. Alexis Straus, USEPA Region IX Director of the Water Division, urged the State Water Board to expeditiously approve the Basin Plan Amendment. Ms. Straus also provided the following comments regarding the phased approach and supported the compliance schedule provisions for NPDES discharges as follows:

“2. Compliance Schedules for NPDES Permittees: The proposed BPA contemplated that compliance schedules for NPDES dischargers will only start at the beginning of Phase 2, after the Regional Board completes a review of the Phase 1 Control Studies. However, this intent is inconsistent with EPA regulations concerning compliance schedules at 40 CFR 122.47 and with the State Boards 2008 Policy for Compliance Schedules in NPDES Permits, both requiring that compliance schedules, if allowed, be as short as possible. The adopted BPA added the following to Chapter IV, Delta Mercury Control Program, Final Compliance Date, fourth paragraph:

“The Regional Board will review the feasibility of meeting waste load allocations based on reliable data and information regarding variability in methylmercury concentrations and treatment efficiencies and time needed to comply with the wasteload allocations. The Phase 1 Control Studies are designed to provide this information. As needed, the Regional Board shall incorporate the Phase 1 Control Studies into compliance schedules. When Phase 1 studies are complete, the Regional Board will review the need for additional time during Phase 2 for NPDES permittees to comply with the final wasteload allocations.

*“**This language is consistent with both federal requirements for compliance schedules and with the 2008 State Policy.** Under the 2008 State Policy, compliance schedules for water quality-based effluent limitations based on the wasteload allocations in the TMDLs are authorized only where the Regional Board determines that the Policy's scope and applicability requirements are met and the discharger complies with the compliance schedule application requirements in paragraph 4 of the Policy, demonstrating that additional time to implement actions to comply with the limitations is needed. We request this language remain included in the approved BPA.” (emphasis added)*

The language cited by Ms. Straus remained unchanged in the BPA. Additionally USEPA (Ms. Alexis Straus, USEPA Region IX Director of the Water Division) approved the water quality standards and the TMDL for the Delta (both of which are in the Basin Plan) on 20 October 2011.

Based on this provision of the Delta Mercury Control Program, the proposed methylmercury compliance schedule for the City of Tracy requires detailed interim requirements consistent with the Basin Plan during Phase 1 of the Delta Mercury

Control Program. At this time, however, it is not possible or reasonable to develop specific interim requirements for Phase 2 and it is recognized in the proposed Order the compliance schedule and final compliance date will change upon completion of the Phase 1 studies and the Central Valley Water Board's Phase 1 Delta Mercury Control Program Review. This was acknowledged by USEPA and was approved to comply with the compliance schedule regulations in 40 CFR 122.47.

CALIFORNIA URBAN WATER AGENCIES (CUWA) COMMENTS

CUWA Comment No. 1. Reopener Provisions

CUWA requests that the proposed Permit include a reopener provision that considers the Drinking Water Policy that may be adopted by the Central Valley Water Board prior to the expiration of this Permit. CUWA proposed the following reopener provision:

“Drinking Water Policy. The Central Valley Water Board will consider adoption of the Drinking Water Policy in 2013. This order may be reopened to incorporate monitoring of drinking water constituents that may be included in the implementation plan for the Drinking Water Policy.”

RESPONSE: Central Valley Water Board staff concurs and have added a new reopener provision in the Limitations and Discharge Requirements, Section VI.C.1, as shown in underline/strikeout format below:

i. **Drinking Water Policy.** The Central Valley Water Board is developing a Drinking Water Policy. This Order may be reopened to incorporate monitoring of drinking water constituents to implement the Drinking Water Policy.

CUWA Comment No. 2. Monitoring Requirements

CUWA requests additional monthly monitoring be included in the effluent and receiving water study for drinking water constituents of concern including total Kjeldahl nitrogen, total phosphorus, total organic nitrogen, ammonia, nitrate plus nitrite, total phosphorus, total organic carbon, dissolved organic carbon, total dissolved solids, and chloride.

RESPONSE: Central Valley Water Board staff concurs and have revised the effluent monitoring requirements to include most of the suggested drinking water constituents, however, some of these constituents are already contained in the proposed Order. Ammonia and nitrate plus nitrite monitoring is required in the proposed Permit. Monthly effluent monitoring has been added for the following constituents: total Kjeldahl nitrogen, total phosphorus, total organic nitrogen, total phosphorus, total organic carbon, dissolved organic carbon, total dissolved solids, and chloride.

CUWA Comment No. 3. Notification of Drinking Water Agencies

CUWA requests that the Central Valley Water Board include a requirement in the proposed Permit to immediately notify downstream drinking water agencies if there are spills of untreated or partially treated wastewater from the Tracy Wastewater Treatment Plant or collection system that reach Delta waters.

RESPONSE: Central Valley Water Board staff concurs and has modified the Limitations and Discharge Requirements, Section VI.A.2.f. as shown in underline/strikeout format below:

- f. The Discharger shall take all reasonable steps to minimize any adverse effects to waters of the State or users of those waters resulting from any discharge or sludge use or disposal in violation of this Order. Reasonable steps shall include such accelerated or additional monitoring as necessary to determine the nature and impact of the non-complying discharge or sludge use or disposal, and adequate public notification to downstream water agencies or others whose contact is reasonably foreseeable with the non-complying discharge.

CENTRAL VALLEY CLEAN WATER ASSOCIATION (CVCWA) COMMENTS

CVCWA Comment A. Priority Pollutant Reporting and Compliance Determination

CVCWA requested that the proposed Permit's Provisions Related to Priority Pollutant Reporting and Compliance Determination should be modified to be consistent with the SIP. To make the proposed Order consistent with these provisions of the SIP, and to eliminate any confusion regarding application of the SIP, CVCWA requested revising the definition for "reporting level," the language for "reporting protocol" (MRP), "Other Reports," and "additional study requirements" (Attachment I) as follows:

REPORTING LEVEL (RL)

RL is the value that the Discharger must report with each sample result for priority pollutants consistent with Sections 2.4.1 and 2.4.4 of the SIP and that is used in determining whether the Discharger has complied with effluent limitations established in this Order. The RL is selected from the MLs listed in Appendix 4 of the SIP in accordance with Section 2.4.2, or established in accordance with section 2.4.3, of the SIP. If there is more than one ML listed in Appendix 4, or if deviation from the MLs listed in Appendix 4 occurs, the Discharger must agree to the ML selected in order for it to apply. RL is the ML (and its associated analytical method) chosen by the Discharger for reporting and compliance determination from the MLs included in this Order. The MLs included in this Order correspond to approved analytical methods for reporting a sample result that are selected by

~~the Central Valley Water Board either from Appendix 4 of the SIP in accordance with section 2.4.2 of the SIP or established in accordance with section 2.4.3 of the SIP.~~ The ML is based on the proper application of method-based analytical procedures for sample preparation and the absence of any matrix interferences. Other factors may be applied to the ML depending on the specific sample preparation steps employed. For example, the treatment typically applied in cases where there are matrix-effects is to dilute the sample or sample aliquot by a factor of ten. In such cases, this additional factor must be applied to the ML in the computation of the RL.

REPORTING PROTOCOLS

3. Reporting Protocols. The Discharger shall report with each sample result the applicable Reporting Level (RL) ~~reported Minimum Level (ML)~~ and the current Method Detection Limit (MDL), as determined by the procedure in 40 CFR Part 136. The Discharger shall report the results of analytical determinations for the presence of chemical constituents in a sample using the following reporting protocols:

a. Sample results greater than or equal to the RL ~~reported ML~~ shall be reported as measured by the laboratory (i.e., the measured chemical concentration in the sample).

OTHER REPORTS

3. Within 60 days of permit adoption, the Discharger shall submit a report outlining minimum levels, method detection limits, and analytical methods for approval, with a goal to achieve detection levels below applicable water quality criteria. The ~~At a minimum, the~~ Discharger shall comply with the monitoring and reporting requirements for CTR constituents as outlined in section 2.3 and 2.4 of the SIP, respectively. This includes the selection of MLs from the MLs listed in Appendix 4 of the SIP unless the Central Valley Water Board and Discharger agree to deviate from the MLs listed in Appendix 4 in accordance with Section 2.4.3 of the SIP.

ADDITIONAL STUDY REQUIREMENTS

I. Background. Sections 2.4.1 through 2.4.4 of the SIP provide the minimum standards for analyses and reporting related to compliance determination. (Copies of the SIP may be obtained from the State Water Resources Control Board, or downloaded from <http://www.waterboards.ca.gov/iswp/index.html>). The Discharger is to follow the reporting protocol established in Section 2.4.4 of the SIP and Section II (Monitoring Requirements) below for purposes of compliance determination.

To implement the SIP, effluent and receiving water data are needed for all priority pollutants. Effluent and receiving water pH and hardness are required to evaluate the toxicity of certain priority pollutants (such as heavy metals) where the toxicity of the constituents varies with pH and/or hardness. Section 3 of the SIP prescribes mandatory monitoring of dioxin congeners. In addition to specific

requirements of the SIP, the Central Valley Water Board is requiring the following monitoring solely for purposes of effluent and receiving water characterization related to reasonable potential determinations for the next permit renewal:

B. Criterion Quantitation Limit (CQL). The criterion quantitation limits will be equal to or ~~lower than~~ the minimum levels (MLs) in Appendix 4 of the SIP or the detection limits for purposes of reporting (DLRs) below the controlling water quality criterion concentrations summarized in Table I-1 of this Order, or lower upon the Discharger's agreement. In cases where the controlling water quality criteria concentrations are below the detection limits of all approved analytical methods, the best available procedure will be utilized that meets the lowest of the MLs and DLR. Table I-1 contains suggested analytical procedures. The Discharger is not required to use these specific procedures as long as the procedure selected achieves the desired minimum detection level.

RESPONSE: Central Valley Water Board staff partially concur. Regarding the definition of "Reporting Level" in Attachment A, staff concurs that it could be more clear, but different changes are proposed. The purpose of Attachment A is to provide definitions of terms used in the permit. The definition of "Reporting Level" goes beyond the definition and discusses compliance issues that are discussed elsewhere in the permit. The compliance issues should not be included in the definition; therefore, the definition of "Reporting Level" in Attachment A has been modified as shown below in underline/strikeout format:

Reporting Level (RL)

~~RL is the ML (and its associated analytical method) chosen by the Discharger for reporting and compliance determination from the MLs included in this Order. The MLs included in this Order correspond to approved analytical methods for reporting a sample result that are selected by the Central Valley Water Board either from Appendix 4 of the SIP in accordance with section 2.4.2 of the SIP or established in accordance with section 2.4.3 of the SIP. The ML_{RL} is based on the proper application of method-based analytical procedures for sample preparation and the absence of any matrix interferences. Other factors may be applied to the ML_{RL} depending on the specific sample preparation steps employed. For example, the treatment typically applied in cases where there are matrix-effects is to dilute the sample or sample aliquot by a factor of ten. In such cases, this additional factor must be applied to the ML in the computation of the RL.~~

Regarding the suggested changes to the Reporting Protocols in section X.B.3 of the Monitoring and Reporting Program (Attachment E), staff concurs with the suggested changes and modified the proposed Order accordingly.

Regarding the suggested changes to Other Reports in section X.D.3 of the Monitoring and Reporting Program (Attachment E), staff has proposed changes to

the requirement that are different than those proposed by CVCWA. Section X.D.3 Monitoring and Reporting Program (Attachment E) has been modified as shown below in underline/strikeout format:

3. Within 60 days of permit adoption, the Discharger shall submit a report outlining ~~minimum reporting~~ levels, method detection limits, and analytical methods for approval, with a goal to achieve detection levels below applicable water quality criteria. ~~At a minimum, the~~ Discharger shall comply with the monitoring and reporting requirements for CTR constituents as outlined in section 2.3 and 2.4 of the SIP. The maximum required reporting levels for priority pollutant constituents shall be based on the minimum levels contained in Appendix 4 of the SIP, determined in accordance with Section 2.4.3 of the SIP. Table I-1 (Attachment) provides required maximum reporting levels for priority pollutant constituents in accordance with the SIP.

CVCWA Comment B. Ammonia, Nitrate + Nitrite and Others

CVCWA requested that the findings for Ammonia, Nitrate + Nitrite and others constituents should be revised to reflect full consideration of the SIP's procedure for determining reasonable potential as required in Section 1.3, Steps 1-8 of the SIP. This includes a discussion of the maximum effluent concentration (Step 4) and maximum ambient background concentration (Step 6). If there is no reasonable potential under Step 4 or Step 6, the SIP allows a determination of reasonable potential based on other information in Step 7. In this case, the facility type alone is not sufficient to make a finding of reasonable potential.

RESPONSE: See response to Discharger Comment No. 9.

CVCWA Comment C. Antidegradation Policy - Treatment Plant Performance

CVCWA commented that use of recent treatment plant performance is an improper baseline for determining consistency with the Antidegradation Policy. Therefore, CVCWA requested removing the use of existing plant performance as a baseline for determining compliance with the Antidegradation Policy.

RESPONSE: See response to Discharger Comment No. 11.