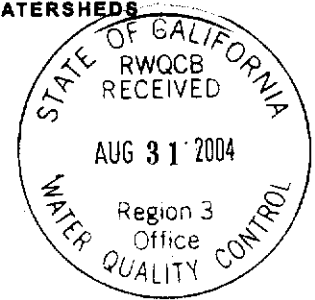


Santa Barbara
CHANNELKEEPER

PROTECTING AND RESTORING THE SANTA BARBARA CHANNEL AND ITS WATERSHEDS

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Mr. Todd Stanley
California Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

August 26, 2004

Re: Waste Discharge Requirements Order No. R3-2004-0122, NPDES Permit No. CA0048143 for the City of Santa Barbara El Estero Wastewater Treatment Facility, Santa Barbara County, WDID No. 3 42 010 8001

Dear Mr. Stanley and Regional Board Members:

The following comments are submitted on behalf of Santa Barbara Channelkeeper ("Channelkeeper") regarding the draft Waste Discharge Requirements Order No. R3-2004-0122, NPDES Permit No. CA0048143 for the City of Santa Barbara El Estero Wastewater Treatment Facility, Santa Barbara County, WDID 3 42 010 8001. Channelkeeper is a non-profit organization dedicated to protecting and restoring the Santa Barbara Channel and its watersheds. We appreciate this opportunity to comment on the draft permit.

Overall, Channelkeeper commends the Regional Board on the draft permit, as it strengthens the monitoring requirements and effluent limits to which the permittee is subject, and requires the development and implementation of a Wastewater Collection System Management Plan. However, we do have some substantive comments on specific requirements contained in the permit, which are described below.

Discharge Prohibitions

The Discharge Prohibition includes a discussion of the impact of AB2800 on Areas of Special Biological Significance ("ASBS"). As an initial matter, we are unclear why this section is in the draft Permit at all. The draft Permit includes no discussion of potential impacts from the discharge to ASBSs, and none of the effluent limitations were



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developed based on the ASBS Beneficial Use or the zero discharge Water Quality Standard articulated in the Ocean Plan for ASBSs.

In any event, the draft Permit's discussion of the impact of AB2800 is simply incorrect. The draft Permit states that AB 2800, which adds Chapter 7 (commencing with Section 36600) to the Public Resources Code ("PRC"), renamed ASBS as Water Quality Protection Areas ("WQPA"), and that the State Water Resources Control Board ("State Board") is evaluating alternatives for amending the Ocean Plan to coordinate with the PRC.

As the California Coastkeeper Alliance¹ pointed out in comments to the State Board, however, AB 2800 did not require reclassification of ASBS to WQPA, and further, the unambiguous language of PRC § 36700 does not purport to, and in any event could not, amend the California Ocean Plan.

The PRC does not purport to change the name of the ASBS, or delete the current protective prohibition of discharges to the ASBS. In fact, the clear text of PRC § 36700(f) states that the WQPA "include, but are not limited to ASBS." Therefore, any proposed amendment to reclassify ASBS as WQPA would alter the clear intent of PRC § 36700(f) by excluding all waterways other than ASBS from the protection afforded in § 36700(f). PRC § 36700(f) does not limit WQPA to the boundaries of ASBS.

Even if AB 2800 and PRC § 36700 did purport to require the State Board to amend the Ocean Plan to clarify language in § 36700, it would be in contravention of the Clean Water Act and would be illegal. The Clean Water Act articulates the step-by-step procedure that the State Board must follow when they amend a Beneficial Use or Water Quality Standard, including at a minimum a Use Attainability Analysis.² Further, the Clean Water Act requires that when states revise or adapt a new Water Quality Standard, "such revised or new standard shall be submitted to the Administrator." 33 U.S.C. § 1313 (c)(2). Therefore, the PRC cannot eliminate an existing Beneficial Use or rescind a Water Quality Standard as the language of the Draft Order blandly states that it did.

Channelkeeper notes that State Board staff proposed modifying the Ocean Plan consistent with the bizarre interpretation of AB2800 set out in the Draft Order. Following comments from the Keepers, NRDC, the Ocean Conservancy, and other members of the environmental community, State Board members came out strongly in opposition to the proposal. The proposal has since been dropped.

¹ The California Coastkeeper Alliance is a coalition of five southern California Waterkeepers (of which Santa Barbara Channelkeeper is one) dedicated to protecting and restoring the quality of California's aquatic ecosystems.

² The federal regulations set forth the process for when a designated use may be reclassified or removed. See 40 CFR 131.10. EPA's Permit Writers Handbook, Chapter 2, provides a useful explanation of the requirements of 40 CFR § 131.10 as to the designation and de-designation of Beneficial Uses. Specifically, Section 2.7 of the Handbook sets out a step-by-step analysis for determining when designated uses may be removed. Once a use of a waterway has been listed, or designated, it cannot be "reclassified for a different use except under specific conditions." If the use is an existing one it cannot be removed unless a use requiring more stringent criteria is added.

Because the language is both inapplicable to the El Estero Permit, and is simply inaccurate, Channelkeeper recommends that it be eliminated from the Permit.

Discharge Specifications

Channelkeeper commends the Draft Order's inclusion of a comprehensive list of effluent limits, and of a requirement for annual sampling for these parameters. The previous permit contained no effluent limits for Ocean Plan B parameters other than those for total chlorine residual, ammonia, and chronic toxicity, and required that sampling for said parameters be conducted only once in 1999. Channelkeeper agrees with Staff's conclusion that due to this infrequent monitoring, there is insufficient data to support the contention that these parameters do not have the reasonable potential to cause or contribute to an exceedence of the Ocean Plan Table B water quality objectives.

We note, however, that mass emissions are only limited during dry weather and only when flow is less than 11 million gallons per day. Mass emission standards apply at all times, and we are unclear why mass emission limits are to be applied only to lower flows in the draft Permit. We recommend that the Permit be revised to include mass limits applicable to all discharges.

Receiving Water Limitations

The receiving water limitations for physical and chemical characteristics contain qualifiers, such as that dissolved sulfide concentrations shall not be "significantly" increased above that present in natural conditions, or that nutrient materials shall not cause objectionable aquatic growth or "degrade" indigenous biota. We note that none of the qualifying terms are defined, but rather are subjective, and therefore demonstrating compliance or non-compliance with those limitations will be extremely difficult. We recommend that these terms be clearly defined in the permit.

Wastewater Collection System Requirements

a. Wastewater Collection System Management Plan Development and Implementation

Channelkeeper applauds the Draft Order's addition of a requirement for the development and implementation of a Wastewater Collection System Management Plan. However, we find that the elements to be included in the plan, as laid out in Attachment 1 of the Monitoring and Reporting Program, are inadequate in that they fail to provide standards to gauge the adequacy of implementation nor a meaningful implementation schedule. Channelkeeper recommends that the permit set minimum performance standards for the program, with deadlines.

For example, pipe inspection (using video) for the permittee's entire system should be completed no later than 24 months after the Permit is adopted, and continued on a 24-month cycle. Similarly, system cleaning should cycle through 50% of the permittee's entire system annually, with greater frequency for areas identified by inspection and/or spill frequency as having more frequent clogging. Further, the Permit should require that pipes identified as having critical defects relating to collapse or spills be repaired no more than 12 months after identification.

Objective performance measures for collection system maintenance programs are readily available in the industry and from regulators. See Black and Veach and the American Society of Civil Engineers, "Optimization of Collection System Maintenance Frequencies and System Performance," EPA Cooperative Agreement #CX824902-01-0, February 1999. The Permit should include those performance requirements to provide clear direction to both Regional Board Staff and the dischargers about what is expected.

Regarding the legal authority element of the Wastewater Collection System Management Plan, we further recommend that it explicitly require that the City have legal authority to require repair or replacement of private laterals if they cause or contribute to sanitary sewer overflows ("SSOs").

b. Wastewater Collection System Overflow Prevention and Response

The purpose of the Permit, and the only objective measure of its success, is the reduction and prevention of SSOs. As noted in the Staff Report, the permittee reported 28 SSOs from January 2000 through May 2004. There are strong indications, however, from statements by local residents to two infiltration and inflow studies conducted by the City (described in greater detail below), that Santa Barbara has under-reported its SSOs. Channelkeeper believes that the permit's additional and more specific requirements to address the overall management of the wastewater collection system will further reduce the occurrence of such events.

Diligent implementation of the measures set out in the Permit should result in reductions in SSOs. However, to ensure that the discharger does develop and implement good collection system programs, the Permit must include numeric performance goals. While this comment applies throughout the Permit, it is most important as applied to SSOs. Channelkeeper recommends that the permittee be held to a standard of 20% spill reductions on an annual basis. Should the permittee fail to achieve the 20% spill reduction, it would be required to increase the level of effort dedicated to the spill reduction program by 20% as measured by funding. Thus by 2009 when the Permit expires, the permittees will have achieved a 60% reduction in spills, or will have substantially increased funding levels to improving the management of their collection systems.

Channelkeeper acknowledges that the Clean Water Act permits no SSOs, and that the Regional Board may take enforcement action at any time for spills. The proposed spill

performance goals would leave the enforcement discretion of the Regional Board unaffected (allowing the Board to assess penalties for large spills or spills impacting sensitive areas), but would provide an objective measure for the permittee and the Board to evaluate progress, and to require increased funding levels. Without clear permit requirements relating to spill performance, the discharger and Regional Board staff run the risk of engaging in endless discussions of what is good engineering judgment, while spill levels, and the environmental and public health impacts, remain stagnant or continue to increase.

c. Discharges Caused by Severe Natural Conditions

Channelkeeper commends the Draft Order's strict prohibition on the discharge of untreated or partially treated sewage. However, the Draft Order provides an exception to Regional Board enforcement against "Discharges Caused by Severe Natural Conditions." This is a new term created for this Permit, and is undefined. The Clean Water Act, EPA regulations, and Federal Courts have carefully defined when unexpected and uncontrollable events excuse a sewage spill. These circumstances are codified at 40 CFR § 122.41(m) and (n), setting forth the bypass and overflow definitions and requirements. Rather than creating uncertainty for the Regional Board and Staff in evaluating spills, as well as potential inconsistency with Federal Law, Channelkeeper recommends that the Permit simply refer to bypasses and overflows as defined by Federal Regulations.

d. Infiltration/Inflow and Spill Prevention Measures

Channelkeeper finds that the Infiltration/Inflow ("I/I") and Spill Prevention Measures required in the Draft Order are inadequate and fail to require the permittee to take actions beyond those currently being conducted under existing and inadequate plans and programs. Channelkeeper notes that the City identified a serious I/I problem in studies conducted in 1983, and again in 2003, and yet has made no meaningful progress towards addressing the issue in the intervening 20 years. Simply endorsing the City's program will perpetuate this failure to act.

Channelkeeper notes that Pacific Grove's wastewater collection system was causing frequent SSOs, and that a permit very similar to that under consideration here was inadequate to address the problem. Pacific Grove has since developed a Sewer System Asset Management Plan ("SSAMP") which, if implemented, will go a long ways toward addressing the SSO problem. That SSAMP represents the appropriate level of effort for collection systems, not the minimal program requirements set forth in this Permit. Channelkeeper has attached Pacific Grove's SSAMP to this letter for staff's review.

Staff Report

With regard to the Staff Report's assertion that "no other problems (such as nuisance caused by odors) are known to have been associated with the Discharger at this time," Channelkeeper calls to Staff's attention the findings of the City's recent evaluation of the

El Estero Wastewater Treatment Plant. The City of Santa Barbara hired Carollo Engineers to conduct said evaluation and develop a strategic plan for replacement and rehabilitation of the facility's infrastructure. Carollo Engineers, in their final report issued in January 2003, identified major capital replacement projects for the next ten years that include more than \$6 million worth of projects pertaining to odor control.³ Facility staff have admitted to Channelkeeper in a recent meeting that there have been problems and complaints related to odor at the facility. We recommend that Staff consult the Carollo report and complaint logs and incorporate their findings into the final Staff Report.

Thank you for the opportunity to comment on the Draft Order, and for your efforts to create a strong permit that protects our local waters and citizens from pollution caused by leaks and overflows from Santa Barbara's sewage system. Please do not hesitate to contact me with any questions or comments.

Sincerely,



Kira Schmidt
Executive Director

³ Carollo Engineers, City of Santa Barbara El Estero Wastewater Treatment Plant Capital Improvement Plan, January 2003.