

February 3, 2006

Director Alexis Strauss
U.S. EPA,
Region IX, WTR-5
75 Hawthorne Street
San Francisco, CA 94105-3901

Chair Jeffrey Young
Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

CENTRAL COAST WATER BOARD

Received

FEB 7 2006

895 Aerovista Place, Ste. 101
San Luis Obispo, CA 93401-7906

Re: Re-issuance of the 301(h) Waiver for the Morro Bay-Cayucos Sewage Plant

Dear Director Strauss, Chair Young, and Members of the Board:

On behalf of Defenders of Wildlife (Defenders), a nationally recognized conservation group representing nearly a half million members and supporters nationwide, and more than one quarter of that in California, we submit the following comments on the re-issuance of the 301(h) waiver, draft NPDES Permit/WDR, and proposed settlement agreement for the Morro Bay-Cayucos Sewage Treatment Plant (Facility or Plant). The primary goal of Defenders mission is to focus our programs on what scientists consider two of the most serious environmental threats to the planet: the accelerating rate of extinction of species and the associated loss of biological diversity, and habitat alteration and destruction. Our programs encourage protection of entire ecosystems and interconnected habitats while protecting predators that serve as indicator species for ecosystem health. The southern sea otter (*Enhydra lutris nereis*), a resident of Morro Bay and surrounding waters, is an indicator species or sentinel species for marine ecosystem health.

Defenders appreciates the hard work and research that Natural Resources Defense Council (NRDC) has done on this issue and, incorporates by reference, the following comments from NRDC's February 2, 2006 comment letter entitled, *Time is of the Essence: The Legal and Technical Reasons Why EPA and the Regional Board Must Deny the 301(h) Waiver and Require Upgrade of the Morro Bay-Cayucos Sewage Plant "As Fast As Possible"*:

- A balanced, indigenous population of marine life does not exist in and around the zone of initial dilution. The presence of a healthy ecosystem is an indispensable prerequisite for issuance of a waiver—even if a waiver applicant proves it has no role in causing identified problems.
- The Plant has not met its burden to show that it can comply with its existing permit and meet applicable water quality standards consistently. Based on a selective analysis, the Facility asks EPA and the Regional Board to ignore the accumulation of toxic metals around its discharge pipe, acute toxicity caused by chlorine, and the presence of dioxin in plant effluent, as well as other unambiguous violations of applicable standards.

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March 24, 2006 Meeting
Morro Bay/Cayucos WWTP

- Recent water quality data, combined with an absence of evidence that the Facility has employed indispensable and standard tracking and monitoring protocols, preclude the Facility from meeting its burden to show that the discharge supports recreational uses in Estero and Morro Bays.
- The Plant's failure to present a "complete" application with current data and information precludes issuance of a Section 301(h) waiver. The EPA and the Regional Board have before them an application submitted in 2003 and which, many instances, relies on even older information. As a result, both EPA's and the Regional Board's analyses, findings, and determinations are based on incomplete and stale information. Moreover, the Facility and the agencies have not complied with various consultation requirements that are legally required and substantively germane to the issues. By contrast, throughout our analysis, NRDC identifies and submits current and material information that has been omitted in the record.
- The Plant is highly likely to have to process additional volumes of effluent in the next five years, a fact which will exacerbate each of the substantive problems that currently plague its operation—including the rate of effective disinfection and water quality standards compliance. The agencies have improperly failed to consider these issues and improperly have concluded that the anti-degradation requirements of the Clean Water Act are met in this instance. This is a glaring failure in light of the fact that waters of national significance are nearby, which deserve the highest level of protection from degradation. It is also a glaring failure in light of the Facility's record of collection system and other spills, which show that even now untreated effluent is reaching local waters due to the outdated nature of the Plant.
- The upgrade proposed by the Plant and the Regional Board to improve Facility performance will occur as much as five years later than it feasibly can be accomplished. By contrast, state law requires that remedial actions like that proposed here take place "as soon as possible." This clear mandate has been ignored so far, paving the way for a 9.5 year upgrade schedule that will assure that water quality degradation continues to occur for nearly a full decade.
- The Permit the agencies propose in the meantime not only waives secondary treatment standards, it also fails to include effluent limits and monitoring for pollutants which have a reasonable potential to cause or contribute to water quality standards.
- Finally, because of all of these issues and additional ones contained in the draft settlement agreement, the settlement document itself fails to meet the standard courts use to determine whether the government is acting consistent with its discretion and in the best interest of the public. While there can be no doubt the upgrade in general furthers that interest, the document fails to require the work on an urgent basis. Moreover, it otherwise creates the conditions for much longer delays beyond 9.5 years by providing insignificant fines—some smaller than a parking ticket—for many violations of its terms as well as broad, unusual interpretations of standard terms. Collectively, these factors indicate that the agreement may not truly reflect "an arm's length negotiation," which is what courts look for in assessing agreements like the one at issue here.


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In closing Defenders would like to emphasize that we: 1) support all efforts to improve nearshore marine ecosystem water quality, including the upgrade of the Plant, as it relates to increased concerns about the land-sea connection, and the health of nearshore inhabitants such as the sea otter and the substantial number of marine invertebrates that comprise the diet of sea otters; 2) urge the Regional Board to require the plant to shorten its upgrade timeline and improve water quality as fast as possible; and 3) believe it is critical that specific measures be included in the Plant permit assuring that it will protect the nearshore marine ecosystem and its inhabitants.

Sincerely,

A handwritten signature in cursive script that reads "Jim Curland". The signature is written in dark ink and is positioned above the printed name.

Jim Curland
Marine Program Associate
Defenders of Wildlife