



Surfrider Foundation®

Submitted
February 3, 2006

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

Chair Jeffrey Young
California Regional Water Quality
Control Board, Central Coast Region
895 Aerovista Place, Suite 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:

The purpose of the waiver for the 30-year old Clean Water Act was intended as a *temporary* measure to enable non-compliant polluters to come into full compliance with the goals of the law. It was not intended as a substitute for responsible planning and transition to a cleaner technology, nor is it an excuse the Morro Bay-Cayucos Sewage Treatment Facility (the "Facility" or the "Plant") should be allowed to rely on because their transition to full secondary treatment has not been enforced.

With due respect, continued non-compliance creates risks to the ecosystem and marine life, including the endangered California Sea Otter, and to public health. Reports and the JPA have suggested that an upgrade—including one that would include tertiary treatment—can be accomplished feasibly twice as fast as proposed. Because the Facility is not entitled to a waiver from secondary standards, we ask that you deny the waiver and order an upgrade "as fast as possible".

Partially treated waste in Morro Bay threatens California

Anything less than full, year-round secondary treatment is unacceptable for discharge into a body of water that is the back yard of a fishing town with a strong tourism industry that centers around ocean recreation and wildlife viewing. The discharge of partially treated waste degrades receiving waters, and poses serious risks to public health and the marine ecosystem, and your credibility as an enforcement agency. Not only is the local community's health and safety in danger, but perhaps more so those who come from other regions or out-of-state to surf, fish, swim, kayak, and dive in these waters, and have little knowledge of what they are getting into.

Currently the state of California is engaged in a complex, stakeholder process to implement the Marine Life Protection Act with a network of protected areas that preserve the unique and threatened marine life in California's state waters. These areas are expected to be in place by 2007 and include state waters in Morro Bay. Your enforcement of the Clean Water Act is crucial to the protection California is extending to its marine resources which belong to the people of California, and which have been verified by the US Commission on Ocean Policy, the Pew Oceans Commission, and Governor Schwarzenegger to be in trouble.

Non-compliance with existing permit and water quality standards

Of great concern to Surfrider, and hopefully to the Board, is that the Facility has failed to 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. Dr. Bruce Bell, an expert on the operation and upgrade of sewage treatment facilities in the United States, exposes and debunks any contention that the Facility can satisfy Section 301(h) requirements in this respect.

Additionally, 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. By contrast, a leading expert on pathogenic contamination of recreational ocean waters, Dr. Mark Gold, demonstrates that the Facility's application creates more questions than it answers—while failing to account for recent data that undercuts the fundamental conclusion that the Facility is not degrading beach water quality.

Long timeline and interim requirements

It is suggested and witnessed by experts that even an upgrade to tertiary standard could be accomplished in less than the proposed 9.5 year timeline. However, because Surfrider strongly advocates for innovative, total water supply and use solutions, including possibly a regional plant, we would accept such a timeline only if the Facility committed to a tertiary upgrade.

Of great concern regardless is the large volumes of effluent the Facility will produce through normal operation 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 failed to consider these issues and have improperly concluded that the anti-degradation requirements of the Clean Water Act are met in this instance. This is a dangerous oversight 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 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 state law requires that remedial actions such as proposed here take place "as soon as possible." This clear mandate has been ignored so far and will assure that water quality degradation continues to occur for nearly a full decade.

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, and issuing insignificant fines for violations.

Surfrider unequivocally stands for clean water. We feel the best course of action and best use of time and resources is for the Facility to seriously pursue upgrading the Plant to tertiary treatment standards. We also feel, as the enforcement authorities, your agencies must require at a minimum an upgrade to full secondary treatment "as fast as possible", and encourage upgrade to tertiary treatment. Representatives from our local chapter as well as our National staff have been active on this issue and attended and commented at JPA and Regional Board meetings since 2004 and have a vested interest finding a feasible solution for wastewater,

Section 301(h) waivers are not intended to provide cover for bureaucratic wrangling, nor may they be issued in lieu of meeting Clean Water Act rules for convenience. For these reasons, the EPA and the Regional Board should deny the waiver based on the evidence before it, and it should require that the Facility upgrade to tertiary so as to improve water quality "as fast as possible."

Respectfully,

The Executive Board of the Surfrider Foundation
San Luis Bay Chapter
Matthew Fleming
Noah Smukler
Tim Tringali
Pam Heatherington

