



ENVIRONMENTAL LAW FOUNDATION

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July 13, 2007

Via Electronic Mail (SMarks@waterboards.ca.gov)

Ms. Sorrel Marks
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

**Re: Order No. R3-2007-0002, NPDES No. CA00000051
Waste Discharge Requirements for ConocoPhillips Company, Santa Maria
Refinery**

Dear Ms. Marks:

On behalf of the Environmental Law Foundation, a non-profit, public interest organization dedicated to protecting water quality throughout California, and the San Luis Obispo Coastkeeper, I would like to thank you for the opportunity to submit comments on Order No. R3-2007-0002, NPDES No. CA00000051, authorizing the discharge of waste by the ConocoPhillips Company's Santa Maria Refinery into the Pacific Ocean. It is our hope that this discharge will not degrade water quality—a requirement under California's antidegradation policy, which requires that water quality be maintained. (See State Water Resources Control Board Resolution 68-16 (Oct. 24, 1968); 40 C.F.R. § 131.12.)

Unfortunately, the finding in the Order that states that the Order is consistent with the state's antidegradation policy is so entirely cursory as to fail to provide any basis for evaluating whether or not that could be the case. All that the Order states is that the Fact Sheet contains a detailed discussion of how the Order is consistent with that policy. (See Order Finding § II.L.) The Fact Sheet, though, says nothing more than "[t]he permitted discharge is consistent with the antidegradation provision of Section 131.12 and State Water Board Resolution No. 68-16." (Order, p. F-25; see also *id.* p. F-11 (same).) That is all the information provided, leaving it entirely to the imagination to determine how the discharge is actually consistent with the state's antidegradation policy.

Under the state's antidegradation policy, the Regional Board must do more to substantiate its findings and "bridge the analytic gap between the raw evidence and ultimate decision or order." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515-16; see also *City of Rancho Palos Verdes v. City Council of Rolling Hills Estates* (1976) 59 Cal.App.3d 869, 889) (holding city council resolution invalid due to lack of findings on "the sub-issues leading to the ultimate decision"). This is particularly true in the present case given that several effluent limitations from the prior permit are not being carried over into the present Order. While discontinuation of these effluent limitations might be permissible under exceptions

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to the Clean Water Act's antibacksliding rule, such exceptions do not carry over to the Board's implementation of the state's antidegradation policy. Under that policy, the Board must explain how discontinuing the effluent limitations will not result in lower water quality. Alternatively, the Board must justify the lower water quality that will result from the discontinuation of the effluent limits according to the provisions in 40 C.F.R. § 131.12(a)(2). Presently, the Order does neither, rendering it impossible to tell exactly how the Order is actually consistent with the state's antidegradation policy where that order, on its face, allows for lower water quality.

Accordingly, we ask that the Order be revised to ensure its consistency with the state's antidegradation policy especially where the discontinued effluent limitations are concerned. We reserve the right to provide further comment regarding the Board's implementation of the state's antidegradation policy upon review of the revisions and would ask that the Order be renoticed with the revisions in order to provide the public a full opportunity to review and comment on the revisions.

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Thank you for your time in considering these comments. If you have any questions, please do not hesitate to contact me. I look forward to working with you and the Regional Board to address these concerns.

Sincerely,



Dan Gildor
Environmental Law Foundation
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Oakland, CA 94612

on behalf of

Gordon R. Hensley,
San Luis Obispo Coastkeeper
1013 Monterey St., Suite 202
San Luis Obispo, CA 93401

cc: Harvey Packard (HPackard@waterboards.ca.gov)