



The Otter Project

www.otterproject.org

475 Washington Street
Monterey, CA 93940
831/646-8837
831/646-8843 FAX

Oct 13, 2008

Ms. Kathy Moore
USEPA

Mr. David LaCaro
Central Coast Water Board

Via email to: dlacaro@waterboards.ca.gov

Comments on Order Number R3-2008-0065, NPDES Permit #CA0047881: Waste Discharges Requirements for the Morro Bay and Cayucos Wastewater Treatment Plant Discharges to the Pacific Ocean, Morro Bay, San Luis Obispo County

Dear Ms. Moore and Mr. LaCaro,

We are encouraged that Morro Bay and Cayucos appear to have finally agreed to upgrade their facility to comply with the US Clean Water Act of 1972. We appreciate the chance to comment on the most recent draft of your NPDES Permit #CA0047881. On behalf of our 3000 members concerned with the recovery of the California sea otter we offer these comments.

The Otter Project cannot support the issuance of a 301(h) waiver for the Morro Bay/Cayucos Wastewater Treatment Plant (Plant). We urge the Regional Water Quality Control Board and EPA to reject the permit and waiver.

We continue to be concerned by the following issues:

1. The application repeatedly references the "Settlement Agreement" between Morro Bay /Cayucos, the Board, and USEPA. The application cannot be approved without disclosure and public review of the settlement agreement.
2. While the details of the settlement agreement are not disclosed, it appears that the settlement approves treatment to only a secondary treatment standard. Secondary treatment does not adequately protect the health of sea otters and the ocean.
3. The timeline thus far has been unreasonably drawn out. Again, although the settlement agreement is not disclosed, it appears the plant will not be in operation until 2014 or 2015.

We must stress that the Morro Bay and Cayucos Sewage Treatment Plant has been operating on waivers from the Clean Water Act for over two decades. The Plant has been discharging sewage with only primary treatment into 50 feet of water, just over half a mile from shore. A sensitive indicator species, the sea otter, is dying in severely disproportionate numbers in the vicinity of the discharge.

The application cannot be approved without disclosure and public review of the settlement agreement.

Item No. 11 Attachment No. 7
December 4-5, 2008 Meeting
Morro Bay/Cayucos WWTP

The most critical components of this permit - timeline and level of upgrade - are not specified in this draft permit. This draft application is vague and public comment cannot be meaningful without further detail.

When will the plant upgrade be completed? The Draft Order, Page 6 states, "Details of the upgrades are discussed in Finding No. I and Section II.A of the Fact Sheet." It is unclear what finding this statement refers to, as Finding I refers to the Ocean Plan. Finding AA Facility Upgrade outlines an 8.5 year upgrade schedule beginning in November 2005 and ending with compliance March 31, 2014. Section IIA, pg F-7 of the Fact Sheet states, "In May 2005, Carollo Engineers returned and presented an 8.5-year timeline to the Discharger. The 8.5-year timeline is based on the shortest reasonable time necessary to select an engineering consultant, coordinate between the Dischargers, develop a facility plan, obtain financing and permits, and design and construct the improvements. The 8.5-year timeline requires the Discharger to achieve full compliance with secondary treatment standards by June 23, 2015." May 2005 through June 2015 is 10 years.

What standard will the Plant be upgraded to? Draft Order page 6 states, "The Discharger plans on upgrading the facility to tertiary treatment." Draft Order page 12 states, "The Discharger has agreed to upgrade the Facility to tertiary treatment pursuant to a Settlement Agreement with the Central Coast Water Board." Fact Sheet page F-7 states: "In June 2004, after public opposition to the 301(h)-modified permit, the Discharger commenced a process to upgrade the treatment plant to meet secondary treatment standards." Also on page F-7, "The 8.5-year timeline requires the Discharger to achieve full compliance with secondary treatment standards by June 23, 2015." And the completion schedule on Draft Order page 13, states, "Achieve Full Compliance with Secondary Treatment Requirements, March 31, 2014."

The Draft Order is vague in light of the fact that the settlement agreement has not been made public and is not available for review. Page 13 states: "Attachment F includes additional information about the facility upgrade. The requirements of the Settlement Agreement are enforceable as set forth in the Settlement Agreement. The Central Coast Water Board and EPA have considered the Settlement Agreement in adopting this Order, but the upgrade requirements are not terms of the Permit. Subject to the provisions of the Agreement regarding Water Board Discretion and New Evidence, the Settlement Agreement contemplates that the Water Board will concur in the issuance of this modified discharge permit and issue an NPDES Permit in order to effect the Settlement Agreement and the Discharger's obligation to complete the upgrade of its treatment facility to tertiary treatment within a eight-and-one-half-year period." What does this mean? How can this order be reviewed devoid of the settlement agreement?

Secondary treatment is not adequately protective of sea otter and ocean health.

Nearly all parties are using sea otter data inappropriately. The facts are:

- Estero Bay in the vicinity of the outfall is an area of relatively low sea otter density as classified by USGS census data. The area to the north is high density and the area to the south is moderate density. The coastal segment (approximately 10 kilometers) around the outfall is low density.
- The area of low sea otter density has ranked number 1 for the number of otters found dead on the beach for 34 out of the past 45 months (January 2005 through September 2008).

- The number of dead otters found on this stretch of beach is often near double any other coastal segment on an annual basis (2003, 2004, 2005, 2007).
- Otters found dead on this coastal segment died from a variety of causes, predominantly disease and domoic acid poisoning (toxic algal blooms).
- There is no scientific evidence directly linking the sanitary sewage outfall to sea otter disease.
- Conversely, there is no data disproving an association. Dr. Patricia Conrad out-planted mussels near the outfall and found no evidence of toxoplasma cysts. However, Dr. Conrad specifically stated in her report: "Given the limitation of our currently available test procedure, it is important to recognize that this assay may not detect low levels of *Toxoplasma* in shellfish, as might occur offshore in the open ocean. Thus the initial results from the testing of mussels deployed at the sewage outfall buoy must be interpreted in light of these test limitations (e.g. it is possible that low concentrations of *Toxoplasma* could have been present in the shellfish deployed on the buoy, but were not detected at these low levels, resulting in false-negative test results)." This very significant caveat is omitted in the Fact Sheet.

Given these facts, yet lack of a direct linkage, we base our comments on a 'weight of evidence' approach. The US Fish and Wildlife Service Southern Sea Otter Recovery Team stated, "Necropsies of fresh otter carcasses over the past 15 years have revolutionized the view of death in this species by establishing that a significant proportion of the overall mortality is caused by a diverse array of parasites and pathogens. Many of these agents have land-based origins, and forceful action toward improved water quality is thus urgently needed." (Research Plan—California sea otter recovery—28 February 2007).

The Otter Project believes we must work on both urban runoff and sanitary sewage discharge. Secondary treatment of sanitary sewage will do little to remove pathogen cysts. A membrane technology tertiary system will best remove pathogens and excess nitrogen (nitrogen triggers and feeds algal blooms) and will allow for water to be reclaimed.

Given the extreme sea otter mortality problems in Estero Bay, we believe requiring tertiary treatment is warranted.

The timeline thus far has been drawn out and unreasonable.

The Clean Water Act 40 C.F.R. 122.47(a)(1) requires plants to upgrade "as fast as possible." The Plant has been given ample time to plan and secure funding; the Plant has been given waivers for over two decades. The plant requested and was declined a 401 certification in 2003. The Plant's existing NPDES permit expired in March of 2004.

There are examples of tertiary sewage treatment plants being planned, financed and constructed in less than five years. Suggesting that 2014 or 2015 is "as fast as possible" simply does not pass the straight-face test.

In Conclusion

USGS data tells us that sea otter death in Estero Bay is vastly disproportionate to other parts of California. The Otter Project strongly believes that sea otters are dying in Estero Bay due


to poor water quality. The USFWS Southern Sea Otter Recovery Team has stated that ACTIONS to improve water quality are urgently needed.

While we appreciate the lack of direct evidence linking the Plant to sea otter mortality, we believe the Board is misinterpreting where the burden of proof lies: the Plant must show they are not a contributing factor.

The Draft Permit does not adequately state a requirement for tertiary treatment protective of ocean health. Further, the timeline is ambiguous and cannot be construed as "fast as possible." The permit should be denied, preserving the Board's leverage to REQUIRE tertiary treatment and a faster timeline.

Thank you for considering these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Shimek", written in a cursive style.

Steve Shimek
Executive Director