

By Electronic Submittal

Mike Plaziak, Executive Officer

April 5, 2022

California Regional Water Quality Control Board, Lahontan Region

2501 Lake Tahoe Blvd.

South Lake Tahoe CA 96150

Request for Action to Prevent the Prohibited Discharge of Plastics Containing Toxic Wastes from the Proposed Guillian/Verizon Wireless Faux Pine Macrotower at 1360 Ski Run Blvd., South Lake Tahoe (El Dorado County Assessor's Parcel Number 025-580-007)

Dear Mr. Plaziak,

This letter is intended as an initial response to your request for additional information concerning proposed discharges of toxic constituents of plastics related to wireless communications towers disguised as faux pine trees, which have been approved by TRPA and others, in this case of the City of South Lake Tahoe. Many such "monopine" towers are currently erected in the California portions of the Lake Tahoe Hydrologic Unit under the Lahontan Water Board jurisdiction. I am part of a group of local citizens and other interested parties who have opposed the above-named project since its inception; the Appeal before the SLT City Council was denied in January 2019. On March 23, 2022, the TRPA Governing Board denied an Appeal of the Project approval by staff. We have included TRPA's response to our December 2021 Appeal letter, the entire Agenda Item for the Appeal Hearing, (link at bottom) which was presumably considered by the TRPA Governing Board in denying the Appeal.

Key Points

- The Water Board has not waived waste discharge requirements for this Project and should not do so, or approve construction under any general waste discharge requirements, until the Project is evaluated by the Water Board.
- Faux pine needles are made of PVC, which as a substance is practically useless without a variety of additives, many toxic. Most conspicuously, the element lead is used in concentrations varying from 1 to 4 percent by weight. Operation of the tower (maintenance/replacement of the faux needles) involves tons of plastic wastes, and the probable discharge of tens of pounds of lead in degraded microplastics at each tower site. Half of the global supply of PVC products is produced in China.

- We request that you notify and order Verizon and/or the property owner, Nel Guillian, that the discharge of any plastic waste from the proposed faux pine wireless macrotower at 1360 Ski Run Blvd. is prohibited under Basin Plan prohibitions until the Water Board has received required technical reports for the proposed waste discharge, under CWC section 13260 or other appropriate legal authority.
- We request that you take this action immediately, without undue delay, as we believe construction of the macrotower at Ski Run Blvd. is eminent.
- We request that the Water Board require investigations at other sites where faux pine macrotowers are sited in the Lake Tahoe region of California, and order cleanups and nuisance abatement as needed. We are concerned with the unsuspected discharge of toxic wastes onto other public and private lands (i.e., USFS lands, schools, hospitals, parks, ski areas) and potential cleanup liabilities that may be imposed. We note Vail operates Heavenly Valley Ski Area, which is subject to waste discharge requirements, on leased USFS lands, and has installed a number of faux pine macrotowers in recent years from which needles have been discharged to land.

Your leadership is needed on this issue, which we believe may be an issue of Statewide or national concern, as the Verizon representative testified at the TRPA Appeal Hearing that he checked with his industry people and the issue of plastic needle wastes had not been raised before.

Uncontrolled Plastic Wastes

We objected to the Project on water quality grounds at the TRPA Appeal Hearing because each monopine tower contains thousands of pounds of plastic needles, so plastic wastes are being discharged on an industrial scale when considered cumulatively. The proposed Project will just be the latest of some twenty or so approved faux pines, which TRPA has required for scenic screening purposes. We have video and physical evidence of gross plastic waste discharges from at least two monopines in the local area, showing how brittle and friable they are, and how the towers can be virtually stripped of needles by the weather in as little as 1 to 2 years. Because the PVC plastic which the needles are made of is manufactured with a variety of toxic additives, including lead at concentrations of 1% – 4% by weight, we have strong reason to suspect the illegal discharge of highly toxic waste, as proposed for this Verizon Project, has already occurred at other monopine tower sites in the Lake Tahoe hydrologic unit and the Lahontan region. Embedded references in our Appeal letter link to additional information on microplastics in the scientific and other (news) literature.

While we believe TRPA, in denying the Appeal, has acted both beyond its allowed discretion and in a manner against the public interest in a number of respects, pages 10-20 of our December Appeal letter lays out the water quality and regulatory issues with uncontrolled plastic wastes. We suggest you read it in its entirety. We make the case in the Appeal letter that under the environmental circumstances the plastic wastes can't reasonably be prevented from being discharged to the wind, and thereby to lands and waters on and off the Project site. TRPA's solution was to add a condition to clean up the visible wastes on the Project site on a twice-annual basis, which we assert is inadequate on its face: The proposed monopine tower is proposed at an initial height of 112 feet, some ten stories. The footprint of the wireless facility is, let's say, roughly 20 by 20 feet. While some plastic debris that falls in the on Project site may be subject to collection, the remainder will not be and will be dispersed to the environment by wind and water as an externality. By imposing this Condition 11, TRPA is implicitly finding that wastes will not leave the Project site, for TRPA can't order or require Verizon to trespass or perform industrial waste collection efforts on the surrounding public and private properties, streets, forest and SEZ and Bijou Park Creek drainageway. This matter is nowhere addressed in the TRPA documentation, so the Condition 11 cleanup requirement fails. Thus, wastes discharged off the Project site will become someone else's problem, a potential soil and water quality problem, a cumulative problem in the making which the Water Board regulations and prohibitions are designed to prevent.

TRPA repeatedly turned a blind eye and a deaf ear to these concerns with their inadequate litter control requirements – which are without monitoring or reporting requirements, lacking any real substance or accountability for what constitutes a “cleanup” of likely-toxic materials. To add further insult to injury, and double down on their malfeasance, the TRPA Governing Board (unanimous but one) specifically stated in final certification of their no significant effect finding that this waste dumping on surrounding properties and waterways is not a significant effect, will not affect others, enjoyment of their properties, etc. Citing pdf page 329 of the TRPA Agenda Packet: “The project to which the use pertains, will not be injurious or disturbing to the health, safety, enjoyment of property, or general welfare of persons or property in the neighborhood, or general welfare of the region, and the applicant has taken reasonable steps to protect against any such injury and to protect the land, water, and air resources of both the applicant's property and that of surrounding property owners.” We think this is blatantly untrue, unsupported by science and common-sense reason. Potential health effects and cleanup liabilities alone could be very costly.

TRPA MOU and Waiver with the Water Board

We note that TRPA staff lacks water quality expertise, lacking water quality specialists, engineers, and geologists like the Regional Board. The agencies are by no means “equivalent” in powers and duties. In an effort to bolster their staff position at the Hearing, TRPA cited outreach to unnamed staff persons and asserted (TRPA Agenda pdf, p. 307), “TRPA staff has contacted the Lahontan Regional Water Quality Control Board (“Lahontan”), the Water [State] Resources Control Board, and the Forest Service Lake Tahoe Basin Management Unit (“LTBMU”). None of these agencies has imposed requirements for needle shedding or informed TRPA that they consider it an issue of concern.” In a footnote 3 to this section: “To the extent Lahontan’s Basin Plan is applicable to Verizon’s project and Verizon must obtain a permit from Lahontan, TRPA’s permit does not operate to excuse or pre-empt such a requirement. To date, Lahontan has not required any monopine project in the Tahoe Basin to obtain a permit.”

The Basin Plan *is* applicable, and TRPA is supposed to implement its requirements under the TRPA Compact and waiver/MOU, whatever is “most stringent.” We find the TRPA has acted egregiously under the law and the MOU with the Water Board, now expired, which has in fact shielded Permittees such as Verizon from Lahontan Water Board requirements through waiving requirements for projects “effectively regulated by TRPA.” We respectfully offer that the TRPA regulation in this matter is worse than ineffective, the TRPA has abused the MOU, and the time for reliance on TRPA should be over with regard to monopine wireless facilities. It is therefore imperative for the Water Board to interrupt and abate this ongoing illicit discharge activity by ordering a report of the proposed waste discharge for the Guillian/Verizon monopine Project approved by TRPA, and proceed with its public regulatory processes; this is the Project to begin with.

The Appeal of the TRPA Permit, March 2022

As mentioned, on or about December 1, 2021, attorneys for Ms. Eisenstecken, et al., filed a letter outlining the case (Appeal letter) against the Verizon tower proposed at Ski Run Blvd. and Needle Peak Rd., which we believe runs afoul of the law in a number of respects, many of which matters are pending resolution in the District 9 Federal Court.

We are not experts on plastic wastes, of which “microplastics” are a subset, and their fate in the environment. However, we shouldn’t have to be, when what is laid out for TRPA and others in the

Appeal letter is the gross tonnage over time of plastic garbage that has been illicitly discharged by some 20 or so existing faux monopine towers in the Lake Tahoe Basin, and that will be discharged from the proposed Needle Peak tower, without adequate controls for the wastes being discharged. We can't comment knowledgeably on the plastics associated with the approved Project because that information has not been disclosed with the application to TRPA. Who the supplier of the branches and needles will be and what their makeup will be is unknown. We suggest the Water Board must obtain that information and evaluate it.

Prior to the March 23, 2022 TRPA Appeal Hearing, Verizon hired a consultant to prepare a report on monopine plastics in an attempt to refute concerns expressed (see TRPA Agenda item, attached). The report suggests PVC is a major constituent of the needles, and goes on to make a number of specious claims. You are welcome to make your own assessment of that report. It was unimpressive from our standpoint. While microplastics pollution is a recognized and growing global problem, the report concludes, in essence, that dumping plastics on an industrial scale in the Lake Tahoe watershed is of no concern, with this Project or any prior monopine Project. TRPA and its Governing Board expressed its agreement with this conclusion in denying the Appeal, and expressed few or no concerns for any other previously-approved monopine, nor were remedial actions suggested. Microplastic wastes are now appearing ubiquitously in the water environment, in human blood, from a variety of uncontrolled sources, as the scientific literature shows. We think we may have discovered a national or even global plastic waste management issue, unrecognized. Your leadership locally at Lake Tahoe could make a real difference.

What We Can Offer

We contacted some suppliers and obtained some limited information about the magnitude and make-up of the plastics for monopines and we can share what we've learned. We would also be willing to pay for certain limited testing of the plastic needles collected from existing local sites, such as for lead, but we feel it may be better to coordinate any sample collection with your staff if possible.

We also have access to a recognized expert on plastics in aquatic and marine environments, Professor Joachim Goes (Columbia University), which we offer as a potential source or resource for information on current plastics research going forward, with an interest (new) in research at Lake Tahoe. (See link at end for more info.) Mr. Goes has suggested his university is among the top labs in the country for testing

for microplastics, and he is interested in a project for evaluating soil and water samples from the Lake Tahoe basin.

We reiterate our desire for prompt written action. Thank you for your consideration of the information provided. We appreciate the planned April 6, 2022 meeting to discuss this matter with you and your staff. If we can be of additional assistance in the meantime, please contact me by email.

Sincerely, Alan Miller. P.E.

Attachments or links:

- 1) Eisenstecken, et al. Appeal Letter to TRPA of Dec. 1, 2022 (see Agenda Packet below, starting at pdf pages 390 – 451)
- 2) TRPA Agenda, Item VIII.b., pdf pages 305 – 630 (link available, as of this writing, to Board Meeting Agenda Packet at <https://www.trpa.gov/governing-board-documents-march-23-2022/>)
- 3) Professor Joachim Goes, M.Sc., link (<https://people.climate.columbia.edu/users/profile/joaquim-i-goes>)