



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, Ca. 94105

FEB 15 2002

(In Reply, refer to WTR-5)

Celeste Cantú, Executive Director
California State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Dear Ms. Cantú:

On May 26, 2000, the U.S. Environmental Protection Agency ("EPA") took action on amendments to the *Water Quality Control Plan, Los Angeles Region* ("Basin Plan") adopted by the Los Angeles Regional Water Quality Control Board ("Regional Board") on March 27, 1989, October 22, 1990, June 13, 1994, and January 27, 1997 (Regional Board Resolutions 89-03, 90-11, 94-07, and 97-02). In that action, EPA approved the 1989, 1990, and 1997 amendments and partially approved/partially disapproved the 1994 amendment. On August 22, 2000, the City of Los Angeles, City of Burbank, City of Simi Valley, and the County Sanitation Districts of Los Angeles County challenged EPA's water quality standards action in the U.S. District Court. On December 18, 2001, the court issued an order remanding the matter to EPA to take further action on the 1994 Basin Plan amendment consistent with the court's decision. [Attachment 1] Specifically, the court required EPA to approve the 1994 Basin Plan in whole; disapprove the 1994 Basin Plan in whole; or partially approve and partially disapprove the 1994 Basin Plan,

"in such a way as to preserve the LA-RWQCB's intention not to immediately subject the waters identified by an asterisk ("*") for the MUN use designation in Table 2-1 of the 1994 Basin Plan to the stringent criteria necessary to protect the MUN use designation for such waters absent further study."

Id. Accordingly, EPA is today revising its May 26, 2000 decision as follows:

I. Municipal and Domestic Supply Designation ("MUN")

In today's action, EPA approves in whole the 1994 Basin Plan. EPA bases its approval on the court's finding that the Regional Board's identification of waters with an asterisk ("*") in conjunction with the implementation language at page 2-4 of the 1994 Basin Plan, was intended "to only conditionally designate and not finally designate as MUN those water bodies identified by an ("*") for the MUN use in Table 2-1 of the Basin Plan, without further action."

Court Order at p. 4. Thus, the waters identified with an ("*") in Table 2-1 do not have MUN as a designated use until such time as the State undertakes additional study and modifies its Basin Plan.¹ Because this conditional use designation has no legal effect, it does not constitute a new water quality standard subject to EPA review under section 303(c)(3) of the Clean Water Act ("CWA"). 33 U.S.C. § 1313(c)(3).

EPA notes that there are certain waterbodies identified by an asterisk ("*") in Table 2-1 which are also identified with an B or I indicating that the MUN use is either "existing" or "intermittent". See 1994 Basin Plan, Table 2-1, footnotes. For any discharge permits to these waterbodies, EPA expects the State to continue to protect any beneficial uses that are actually being attained in the waterbody as required by 40 C.F.R. § 131.12(a)(1) and the State's anti-degradation policy. State Board Resolution No. 68-16.

II. Narrative Criteria Applicable to Toxic Pollutants

Pursuant to the court's order, EPA has also reviewed the new or revised narrative criteria in the 1994 Basin Plan to determine consistency with section 303(c)(2)(B) of the CWA, 33 U.S.C. § 1313(c)(2)(B), and with the regulations at 40 C.F.R. § 131.11(a)(2). See Court Order at p. 9, para. 10.

Section 303(c)(2)(B) of the CWA requires states to adopt specific numeric criteria for those toxic pollutants listed pursuant to section 307(a)(2) for which section 304(a) criteria have been adopted.² If a state does not adopt numeric criteria for the priority toxic pollutants for which 304(a) criteria have been adopted, EPA guidance allows a state to satisfy section 303(c)(2)(B) by adopting a translator procedure to translate narrative criteria for priority toxic pollutants. 57 Fed. Reg. 60853, 60873 (Dec. 22, 1992). In 1994 when the Basin Plan amendment was adopted by the State, the Basin Plan did not contain all of the numeric criteria for toxic pollutants as required by section 303(c)(2)(B) and the State had not developed a translator procedure. Because California had not satisfied the requirement of section 303(c)(2)(B), on May 18, 2000, EPA promulgated the California Toxics Rule ("CTR") in which it established the specific numeric criteria for the priority toxic pollutants for California, as required by CWA section 303(c)(2)(B). 65 Fed. Reg. 31682, 31686-87 (May 18, 2000). In addition, in December 1992, EPA had promulgated the National Toxics Rule ("NTR") which

¹It is EPA's understanding that the Regional Board will commence review of the MUN use designations to identify appropriate beneficial uses before its next triennial review. We will work closely with the Regional Board to ensure that modifications to use designations are completed consistent with the Clean Water Act and federal regulations.

²Consistent with the regulatory definition in 40 C.F.R. § 131.3(d) which states that "toxic pollutants" means "those pollutants listed by the Administrator under section 307(a) of the Act," EPA uses the terms "toxic pollutants" and "priority toxic pollutants" interchangeably because the 307(a) pollutants are known as priority toxic pollutants.

also established certain numeric criteria for toxic pollutants in California as required by section 303(c)(2)(B). 57 Fed. Reg. 60848 (Dec. 22, 1992). Thus, any need for California to have a "translator" in the absence of numeric criteria to satisfy section 303(c)(2)(B) has been superceded by the existence of numeric criteria.

In addition to the requirements of section 303(c)(2)(B), 40 C.F.R. § 131.11(a)(2) requires that

"[w]here a State adopts narrative criteria for toxic pollutants to protect designated uses, the State must provide information identifying the method by which the State intends to regulate point source discharges of toxic pollutants on water quality limited segments based on such narrative criteria."

The 1994 Basin Plan includes several new or revised narrative criteria; however, only two new and one revised narrative water quality criteria might be used to regulate point source discharges of priority toxic pollutants on water quality limited segments.³ These three narrative criteria are Bioaccumulation, Polychlorinated Biphenyls ("PCBs"), and Toxicity. As noted above, for certain priority toxic pollutants, the NIR or CTR provide specific numeric criteria and thus no further information is required under 40 C.F.R. § 131.11(a)(2). For any other priority toxic pollutants, or in order to use narrative criteria in lieu of the promulgated numeric criteria, the State must provide information regarding how it will regulate point source discharges to water quality limited segments using these narratives. Accordingly, EPA has evaluated whether the State has provided information identifying the methods for implementing these three narratives. Each narrative is discussed separately below: [New criteria and additions to existing criteria are *italicized* and deletions to existing criteria are in *strikeout* format.]

³The 1994 Basin Plan also contains a criterion for "Chemical Constituents" which states,

"Surface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated use.

Waters designated for use as Domestic or Municipal Supply (MUN) shall not contain concentrations of chemical constituents in excess of the limits specified in the following provisions of Title 22 of the California Code of Regulations which are incorporated by reference into this plan: Table 64431-A of Section 64431 (Inorganic Chemicals), Table 64431-B of Section 64431 (Fluoride), and Table 64444-A of Section 6444 (Organic Chemicals). *This incorporation by reference is prospective including future changes to the incorporated provisions as the changes take effect. (See Tables 3-5, 3-6, and 3-7.)*" 1994 Basin Plan at p. 3-8.

This Chemical Constituents criterion functions as a numeric criterion which relies on MCLs in the State's Title 22 regulations to protect waters with the MUN use designation. Consequently, no further information is required under 40 C.F.R. § 131.11(a)(2) and this criterion is fully approved.

1. Bioaccumulation

Narrative Objective for Bioaccumulation:

"Toxic pollutants shall not be present at levels that will bioaccumulate in aquatic life to levels which are harmful to aquatic life or human health." 1994 Basin Plan at p. 3-8.

EPA approved this narrative criterion on May 26, 2000. In response to the court remand, EPA evaluated whether California had provided information identifying how it would use this criterion to regulate point source discharges of toxic pollutants to water quality limited segments. While the State has procedures to calculate water quality based effluent limitations (WQBELs) for priority toxic pollutants using the numeric water quality criteria identified in the California Toxics Rule (see *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California State Board, 2000* ("State Implementation Policy" or "SIP") at pp. 5-12), EPA has not identified other information in the Basin Plan, the California Toxics Rule, or State Implementation Policy which describe how the State intends to regulate point source discharges of other priority toxic pollutants using this bioaccumulative narrative criterion. Thus, until such time as the State provides information as required by 40 C.F.R. § 131.11(a)(2), EPA does not consider its May 26, 2000 approval of the bioaccumulation narrative criterion to extend to the use of this criterion for purposes of regulating point source discharges of toxic pollutants on water quality limited segments.⁴ When EPA determines that the State has provided the information required by 40 C.F.R. § 131.11(a)(2), the State may then use this narrative criterion for purposes of regulating discharges from point sources of toxic pollutants to water quality limited segments.

2. Polychlorinated Biphenyls (PCBs)

Narrative Objective for PCBs:

"The purposeful discharge of PCBs (the sum of chlorinated biphenyls whose analytical characteristics resemble those of Aroclor-1016, Aroclor-1221, Aroclor-1232, Aroclor-1242, Aroclor-1248, Aroclor-1254, and Aroclor-1260) to waters of the Region, or at locations where the waste can subsequently reach waters of the Region, is prohibited." 1994 Basin Plan at p. 3-15.

EPA approved this narrative criterion on May 26, 2000. In response to the court remand, EPA evaluated whether California had provided information identifying how it would use this criterion to regulate point source discharges of toxic pollutants to water quality limited segments. This narrative criterion for PCBs is best described as a discharge prohibition. Thus, in its own terms it provides sufficient information for its implementation to satisfy 40 C.F.R.

⁴Because the requirements of 40 C.F.R. § 131.11(a)(2) are only triggered for the regulation of point source discharges of priority toxic pollutants on water quality limited segments, the narrative criterion would be applicable for any other purpose.

§ 131.11(a)(2). Therefore, EPA affirms its May 26, 2000 approval of the PCB narrative criterion.

The 1994 Basin Plan also includes a revised criterion for the pass-through or uncontrollable discharges of PCBs which is numeric and therefore does not trigger the requirements of 40 C.F.R. § 131.11(a)(2).⁵

3. Toxicity

Narrative and Numeric Objectives for Toxicity:

"All waters shall not contain be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in, human, plant, animal, or aquatic life. Compliance with this objective will be determined by use of indicator organisms, analyses of species diversity, population density, growth anomalies, bioassays of appropriate duration (SWRCB and Department of Fish and Game has issued "Guidelines for Performing Static Acute Toxicity Fish Bioassays in Municipal and Industrial Wastewaters - July 1976") or other appropriate methods as specified by the State or Regional Board.

The survival of aquatic life in surface waters, subjected to waste discharge or other controllable water quality factors, shall not be less than that for the same water body in areas unaffected by the waste discharge, or when necessary for other control water that is consistent with the requirements for "experimental water" (dilution water) as described in the guidelines. As a minimum, compliance with this objective as stated in the previous sentence shall be evaluated with a 96-hour bioassay.

There shall be no acute toxicity in ambient waters, including mixing zones. The acute toxicity objective for discharges [see previous paragraph] dictates that the average survival in undiluted effluent for any three consecutive 96-hour static or continuous flow bioassay tests shall be at least 90%, with no single test having less than 70% survival when using an established USEPA, State Board, or other protocol authorized by the Regional Board.

There shall be no chronic toxicity in ambient waters outside of mixing zones. To determine compliance with this objective, critical life stage tests for at least three species

⁵Numeric Objective for PCBs:

Pass-through or uncontrollable discharges to waters of the Region, or at locations where the waste can subsequently reach water of the Region, are limited to 70 pg/L (30 day average) for protection of human health and 14 ng/L and 30 ng/L (daily average) to protect aquatic life in inland fresh waters and estuarine waters respectively. 1994 Basin Plan at p. 3-15.

with approved testing protocols shall be used to screen for the most sensitive species. The test species used for screening shall include a vertebrate, an invertebrate, and an aquatic plant. The most sensitive species shall then be used for routine monitoring. Typical endpoints for chronic toxicity tests include habitat, gross morphological abnormalities, survival, growth, and reproduction.

In addition, effluent limits based upon acute bioassays of effluents will be prescribed where appropriate; additional numerical receiving water objectives for specific toxicants will be established as sufficient data become available, and source control of toxic substances will be encouraged.

Effluent limits for specific toxicants can be established by the Regional Board to control toxicity identified under Toxicity Identification Evaluations (TIEs)." 1994 Basin Plan at pp. 3-16 and 3-17.

EPA approved this narrative criterion for toxicity on May 26, 2000. In response to the court remand, EPA evaluated whether California had provided information identifying how it would use this criterion to regulate point source discharges of toxic pollutants to water quality limited segments.

The first and second paragraphs delete reference to 1976 acute toxicity test guidance that, in the NPDES program, has been superseded by acute and chronic toxicity test methods required by 40 C.F.R. Part 136, Table 1A and the State Implementation Policy. SIP at pp. 28-30.

The third paragraph is new and contains detailed information regarding the implementation of the narrative acute toxicity criterion for regulation of point source discharges. This information specifies the use of approved acute toxicity test methods, specifies that there can be no mixing zones for acute toxicity (see also SIP at p. 15 and Appendix 1), and identifies numeric WQBELs for acute toxicity (i.e., percent survival requirements). This language itself provides sufficient detail for the regulation of discharges to satisfy 40 C.F.R. § 131.11(a)(2). Therefore, EPA fully approves the narrative acute toxicity criterion.

The fourth paragraph is also new and contains detailed information regarding the implementation of the narrative chronic toxicity criterion. This information specifies the test organisms and test endpoints and requires that no chronic toxicity be present outside a mixing zone. In addition, the State Implementation Policy contains chronic toxicity control provisions in the form of approved test protocols and requirements for TIE/TRE procedures. SIP at pp. 28-30. The fifth paragraph, which is also new, further directs the Regional Board to establish effluent limitations for specific toxicants which have been identified with the TIE procedures. This is also now required by the SIP which requires chronic toxicity effluent limitations where discharges show reasonable potential. All of this information, in conjunction with the regulations at 40 C.F.R. § 122.44(d)(1)(vi), provides sufficient detail for the regulation of discharges to satisfy 40 C.F.R. § 131.11(a)(2). Therefore, EPA fully approves the narrative chronic toxicity criterion.

EPA intends to continue working closely with the Regional Board during the triennial review process. Our aim is to take prompt action on any further Basin Plan amendments and assist the Regional Board as needed. If there are any questions regarding our action, please contact Robyn Stuber, of my staff, at (415) 972-3524. As always, we look forward to continued cooperation with the State in achieving our mutual environmental goals.

Sincerely,


Alexis Strauss 15 February 2002
Director, Water Division

cc: Dennis Dickerson, Los Angeles Regional Water Quality Control Board
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