



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

AUG 25 2009

RECEIVED

AUG 27 2009

DIVISION OF WATER QUALITY

Dorothy Rice
Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Dear Ms. Rice:

The Environmental Protection Agency (EPA) has reviewed the request for approval of the State Water Resources Control Board (State Water Board) Water Quality Control Plan for Enclosed Bays and Estuaries – Part-1 Sediment Quality. I am pleased to inform you that we are approving this plan.

The Water Quality Control Plan for Enclosed Bays and Estuaries of California (Enclosed Bays and Estuary Plan) was originally adopted by the State Water Board on November 16, 1995 (Resolution No. 95-84). The amendment to the Enclosed Bays and Estuary Plan was adopted by the State Water Board on September 16, 2008 under State Water Board Resolution No. 2008-0070. The California Office of Administrative Law approved the rulemaking file and regulatory action on January 5, 2009. The State Water Board submitted the amendment to EPA for approval on February 9, 2009. The complete submission package was received by EPA on February 11, 2009.

Today's Action.

Section 303(c) of the Clean Water Act (CWA) requires EPA to approve or disapprove new or revised state-adopted water quality standards. The State regulatory provisions that are subject to EPA's approval authority under Section 303(c) are those addressing antidegradation, beneficial uses, water quality criteria, and implementation of water quality standards for surface waters. EPA has determined the changes to the Enclosed Bays and Estuary Plan are subject to EPA's section 303(c) approval authority.

The plan provides narrative sediment quality objectives protecting benthic communities from direct exposure to pollutants in sediments and minimizing human health risk from consumption of fish and shellfish tissue that may pose a risk as a result of contaminants in sediment. The plan also includes a description of the applicable beneficial uses, a description of how the narrative objectives may be interpreted and the means by which these narrative objectives shall be applied to existing water quality protection plans.

The potential effects of toxic pollutants in sediments to fish and wildlife, including federally listed threatened and endangered species, will be considered during phase 3 of the State Water Board's SQO process and will be the subject of a future amendment to the Enclosed Bays and Estuaries Plan. In July of 2007, EPA determined that the products and implementation of the State Board's SQO process addressing the effects on fish and wildlife would help satisfy a term and condition of the biological opinion for the California Toxics Rule. We expect the State Board to continue coordination with the Fish and Wildlife Services and the National Marine Fisheries Service to evaluate the effects of the SQOs to fish and wildlife.

Pursuant to CWA section 303(c) and the implementing federal regulations at 40 CFR 131, EPA hereby approves this amendment. EPA's approval is based on our finding that the **amendment is consistent with the requirements of the CWA and EPA's regulations at 40 CFR 131.5 and 131.6.**

Public Participation

EPA compliments the State on its efforts to include the public in the development and review of new and revised water quality standards. Public involvement is an integral component of a successful water quality program. Based upon our review, the public review procedures followed by the State in the development of State Water Board Resolution No. 2008-0070 were consistent with the procedural requirements for public participation in triennial reviews, adoption, and revision of state water quality standards.

Relationship to the Basin Plans

Today's action supersedes applicable narrative objectives in basin plans (except clean up and abatement activities where a site assessment was completed and submitted to the Regional Water Board by February 19, 2008). These are superseded only in the specific cases where the Board is applying the narratives to protect benthic communities from direct exposure to toxic pollutants in sediment. (Section II.B.1)

A Regional Board Basin Plan narrative objective (described below) may be applied to protect sediment quality when:

1. Other sediment dependent receptors are harmed or at risk;
2. The cause or threat is not associated with a toxic pollutant; or
3. To protect human health from toxic contaminants in fish and shellfish tissue derived from bay and estuarine sediments.

EPA commends the State Water Board staff for its excellent work in establishing sediment quality objectives. If there are any questions regarding EPA's action, please contact Janet Hashimoto, of my staff, at (415) 972-3452 or Terry Fleming at (415) 972-3462. As always, EPA looks forward to continued cooperation with the State in achieving our mutual environmental goals.

Sincerely,

Alexis Strauss 25 Aug. 2009
Alexis Strauss
Director, Water Division

cc: ✓ Chris Beegan (SWCRB)
Dominic Gregorio (SWRCB)
Rik Rasmussen (SWRCB)
Thomas Gardner (Mail Code 4305)

