commentletters

From: N.D. Fenton <nanidrew@comcast.net>
Sent: Friday, January 29, 2016 3:25 AM
To: commentletters
Subject: public comment Water Quality Order 2011-0004-DWQ.

Public comment is regarding **REISSUANCE OF STATEWIDE GENERAL NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT FOR BIOLOGICAL AND RESIDUAL PESTICIDE DISCHARGES TO WATERS OF THE UNITED STATES FROM SPRAY APPLICATIONS (SPRAY APPLICATIONS PERMIT)**
Request for a Public Hearing is made.

1) The proposal by the State Water Board does not comply with many provision of the Management Agency Agreement (MMA) between the California Department of Pesticide Regulation and the State Water Board signed in 1997. Actions taken must follow the requirements written in the MMA, yet does not.

CFR § 123.24 Memorandum of Agreement with the Regional Administrator.

(a) Any State that seeks to administer a program under this part shall submit a Memorandum of Agreement. The Memorandum of Agreement shall be executed by the State Director and the Regional Administrator and shall become effective when approved by the Administrator. In addition to meeting the requirements of paragraph (b) of this section, the Memorandum of Agreement may include other terms, conditions, or agreements consistent **with this part and relevant to the administration and enforcement of the State's regulatory program**.

(b) The Memorandum of Agreement shall include the following:

(1)

(i) Provisions for the prompt transfer from EPA to the State of pending permit applications and any other information relevant to program operation not already in the possession of the State Director (e.g., support files for permit issuance, compliance reports, etc.). If existing permits are transferred from EPA to the State for administration, **the Memorandum of Agreement shall contain provisions specifying a procedure for transferring the administration of these permits**. If a State lacks the authority to directly administer permits issued by the Federal government, a procedure may be established to transfer responsibility for these permits.

#2) The State Water Board attempts to add language that delegates the State Water Board's authority to the Executive Director or his/her designee. THIS IS NOT AUTHORIZED BY LAW. No justification, reason or necessity is explained for transferring authority, no legal code is cited allowing such delegation, no resolution has been adopted, is without description, no declaration of conflict is offered.

#3) in many instances and limits the authority of DPR in carrying out their legal responsibilities for regulating the use of pesticides, the water board is absorbing the duties and requirements of the DPR, yet has no expertise or program or budget to do so.

#4) Additionally, The MAA requires written consent of both parties and/or terminated by either party upon a 30-day advance written notice to the other party. No written notice to terminate the MAA is known to exist, therefore it must follow the MAA and the Asscociated Plan

#5) The State Water Board does not possess a statement from the State Attorney General that it has adequate authority to carry out this program as proposed. CFR § 123.23 Attorney General's statement. States: “Any State that seeks to administer a program under this part **shall submit a statement from the State Attorney General** (or the attorney for those State or interstate agencies which have independent legal counsel) that the laws of the State, or an interstate compact, provide adequate authority to carry out the program described under § 123.22 and to meet the requirements of this part. This statement shall include citations to the specific statutes, administrative regulations, and,

where appropriate, judicial decisions which demonstrate adequate authority. State statutes and regulations cited by the State Attorney General or independent legal counsel shall be in the form of lawfully adopted State statutes and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. To qualify as "independent legal counsel" the attorney signing the statement required by this section must have full authority to independently represent the State agency in court on all matters pertaining to the State program."

#6) The public requests NONE of the serious changes or actions be adopted, no justification, no scientific analysis, no risk assessment of the major changes are offered. The Health and Safety of the residents are threatened by all changes/proposals:

Changing the permit from a general permit to an individual permit and naming the California Department of Food and Agriculture as the sole agency covered by the individual statewide permit;

Removing toxicity testing requirements based on toxicity studies conducted under the Vector Control Permit, Order 2011-0002-DWQ;

Regulating active ingredients instead of pesticide products, resulting in deletion of Attachment E which lists pesticide products regulated by the permit; and

Adding language that delegates the State Water Board's authority to the Executive Director or his/her designee to:

Add active ingredients that are registered by the California Department of Pesticide Regulation for spray applications and used by the California Department of Food and Agriculture. Add receiving water limitations to corresponding newly added active ingredients; and

Grant a regulatory exception to the California Department of Food and Agriculture from complying with pollutant receiving water limitations pursuant to the California Ocean Plan and/or the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California.

7) Serious conflicts of interest has not been disclosed in this matter. Request admission that pesticide industry wrote the entire proposal and permit changes for the State Water Board to promote on their behalf.

#8) The claim by the Water Board is false, misleading is challenged is not valid. Independent analysis is required, the state has a conflict of interest with its own unvalidated study: "" the state Implementation Policy As stated in Finding III.A.5, the State Water Board conducted toxicity studies which determined that there were **no significant impacts** to waters of the U.S. from pesticide applications. Based on these toxicity studies, this Order does not contain toxicity testing requirements. . Therefore, requirements of this Order implement the SIP."

#9) NO FINDINGS HAVE BEEN ADOPTED THAT SHOW A CHANGE IS FOR THE MAXIMUM BENEFIT OF THE PEOPLE OF THE STATE

The Water board wrongly claims: "Antidegradation Policy Section 131.12 of 40 C.F.R. requires that state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution 68-16. Resolution 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. **Resolution 6816 requires that existing water quality be maintained unless degradation is justified based on specific findings**. The Basin Plans implement, and incorporate by reference, both the state and federal antidegradation policies."

The actual policy states as follows:

"G. Antidegradation Policy

Water quality standards must also coilforill to federal regulations for antidegradation (40 CFR Section 13 1.12) and State Board Resolution No. 68- 16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California." Application of the antidegradation provisions to the standard setting process requires supporting documentation and appropriate findings whenever a standard (beneficial use and water quality objective) would allon- a reduction in water quality below currently existing water quality or below higher water quality which nlay have existed since 1968. The federal antidegradation regulation does not absolutely bar reductions in water quality in surface waters. Rather, the regulation requires that reductions in water quality be justified to accommodate important social and econoinic development as long as instream beneficial uses are not impaired and the water quality of any waters constituting an outstanding national resource is maintained and protected. Under State

Board Resolution No. 68-16, which applies to all waters of the State**, the State and Regional Boards must adopt findings that show that the change is for the maximum benefit of the people of the State."**

PROHIBITIONS under CFR – does not allow the State Water Board to issue a permit:
§ 122.4 Prohibitions (applicable to State NPDES programs, see § 123.25).
No permit may be issued:
(a) When the conditions of the permit do not provide for compliance with the applicable requirements of CWA, or regulations promulgated under CWA;
(b) When the applicant is required to obtain a State or other appropriate certification under section 401 of CWA and § 124.53 and that certification has not been obtained or waived;
(c) By the State Director where the Regional Administrator has objected to issuance of the permit under § 123.44;
(d) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States;
(e) When, in the judgment of the Secretary, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;
(f) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;
(g) For any discharge inconsistent with a plan or plan amendment approved under section 208(b) of CWA;
(h) For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

(1) Before the promulgation of guidelines under section 403(c) of CWA (for determining degradation of the waters of the territorial seas, the contiguous zone, and the oceans) unless the Director determines permit issuance to be in the public interest; or
(2) After promulgation of guidelines under section 403(c) of CWA, when insufficient information exists to make a reasonable judgment whether the discharge complies with them.
(i) **To a new source or a new discharger**, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by sections 301(b)(1)(A) and 301(b)(1)(B) of CWA, and for which the State or interstate agency has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:
(1) There are sufficient remaining pollutant load allocations to allow for the discharge; and
(2) The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The Director may waive the submission of information by the new source or new discharger required by paragraph (i) of this section if the Director determines that the Director already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this paragraph (i)(2) is to be included in the fact sheet to the permit under § 124.56(b)(1) of this chapter.

Thank you for this opportunity
by BRUCE FENTON