



California Regional Water Quality Control Board

Central Valley Region

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ITEM 4

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PROPOSED REVISIONS TO THE POLICY FOR IMPLEMENTATION OF TOXICS STANDARDS FOR INLAND SURFACE WATERS, ENCLOSED BAYS, AND ESTUARIES OF CALIFORNIA

The Central Valley Regional Water Quality Control Board staff has reviewed the proposed revisions to the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP). In accordance with the Notice of Public Hearing, we would like the State Board to consider our comments on the revisions.

1. Establishing Water Effect Ratios (WERs) as Part of the Permitting Process

The proposed SIP revisions appear to allow the Regional Boards to use WER procedures to derive receiving water limitations (i.e. permit-specific criteria) in permitting actions. While approving WERs through the NPDES Permit process appears more streamlined than approval of the same WER through the Basin Planning process, it can lead to undesirable complications as discussed below. The basin planning process is better suited for developing site-specific water quality objectives.

- a. The EPA Interim Guidance describes WERs as being derived based on the water quality downstream of a discharge. This process allows the quality of the discharge to set the water quality standards for our streams instead of basing the quality on what is necessary to protect beneficial uses. This concept does not appear to be consistent with the Porter Cologne Water Quality Control Act. This application would be particularly of concern in the case of effluent-dominated water bodies. The State Water Resources Control Board should include an evaluation of this concern as part of the proposed revisions.
- b. There appears to be major differences between developing a site-specific objective through the basin planning process and establishing a WER in a permit given the nature of these processes. The SIP does not address or discuss this difference. The SIP refers to EPA guidance on how to do WERs, but this guidance is mostly directed toward explaining how to establish WERs as part of the standard setting process. If the proposed SIP envisions that the level of technical review, stakeholder input and scientific review will be equivalent under both processes, the SIP needs to

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explain how. If on the other hand, establishing WERs as part of a permit is viewed as a streamlined process, then this needs to be clearly explained and justified in the SIP.

- c. The proposed SIP revision appears to contemplate that a WER used in the permitting context would actually "adjust the criteria/objective" applicable to a particular discharge. This suggests that individual permits could be used to relax water quality objectives. Our understanding is that such adjustments require compliance with the California Environmental Quality Act (CEQA) and analysis of the factors in Water Code Section 13241. Please clarify whether the SIP provides for the use of WERs as an alternative to a basin plan amendment to adjust water quality objectives and, if so, how adoption of WERs in NPDES permits complies with the Porter-Cologne Water Quality Control Act and CEQA.
- d. The EPA Interim Guidance notes that determining WERs requires substantial resources. This would add an additional burden on already overworked NPDES permit writing staff. This would delay permit development, increase the staff costs associated with writing permits, and provide another avenue for petitions and litigation. The SIP does not adequately assess the costs associated with this revision or the potential environmental impacts associated with delays in permit adoption and implementation of permit requirements due to litigation. Instead, the economics analysis incorrectly indicates that there will be no economic impacts from the revisions.
- e. Many dischargers currently meet CTR receiving water limitations. Establishing a receiving water limit based on a WER may produce higher receiving water limitations. The SIP does not address anti-degradation and/or anti-backsliding concerns.
- f. Further clarification is needed to explain what exactly is being established when a WER is developed as part of the permitting process and how it relates to other discharges. The proposed SIP revision does not adequately describe how a discharger-specific WERs would apply to adjacent NPDES discharges, non-point source discharges and/or TMDL wasteload allocations. For example, if a WER is appropriate for a specific discharger, it is unclear what requirements would apply to a non-point source discharge to the same water body. The SIP does not apply to non-point source discharges (according to the footnote in the SIP), so no WER would be applicable. The relationship between a discharger-specific WER and a TMDL wasteload allocation is also confusing and would be subject to interpretation because TMDL development cannot consider the WER and would implement the NTR/CTR criteria. In order to consider the WER, TMDL staff would need to develop site-specific water quality objectives for impaired waterbodies that have WERs. This will increase the time and resources to develop TMDLs.

2. Eliminating Reasonable Potential Trigger

The proposed SIP revisions would not require establishment of an effluent limit if the receiving water exceeds the applicable criteria/objective, unless the effluent also has a detectable concentration. Wastewater is sampled infrequently. Some constituent exceedances are rarely found but at high values, possibly from slug load discharges. The likelihood of sampling being conducted when a slug load is being discharged is statistically low, so the existing SIP language to include an

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effluent limitation when the receiving water exceeds criteria provides protection in the event that effluent may periodically contain that constituent. The proposed revision removes that protection.

The proposed revision of Section 1.3 is also confusing and does not make sense. Step 7 provides the ability to review other information available to determine if a water quality-based effluent limitation is required. However, the proposed revision provides that Step 7 can only be used if background concentrations are less than criteria. When background exceeds the criteria (a worse condition), the proposed SIP revision will only allow additional monitoring, and no review of additional information to determine if a water quality-based effluent limitation is required. The SIP should allow consideration of additional information for both cases.

In addition, Appendix 2 to the SIP is a flow diagram showing the process of determining pollutants requiring water quality-based effluent limitations. Step 7 (analyze additional information) needs to be amended to allow the determination that an effluent limitation is required, as is indicated in the narrative text of Section 1.3.

3. Clarification of Applicability of SIP to Non-Point Source Discharges

The proposed SIP revision includes a new footnote that says that the SIP does not apply to non-point sources. It also deletes language about how waivers and WDRs can be used to implement the SIP for non-point sources. This appears to be a substantial, regulatory modification that needs clarification. The SIP should be clarified to explain how addition of the footnote influences how we regulate non-point source discharges. We assume that the language in the SIP means that the CTR and NTR criteria are the water quality objectives that apply in surface waters for non-point source discharges and that non-point sources will not be able to take advantage of WER provisions or any other implementation provisions in the SIP. Our current waiver for discharges from irrigated lands includes provisions that these discharges must meet CTR and NTR requirements. We strongly oppose any provisions in the SIP that would suggest that non-point source discharges do not have to meet current CTR, NTR and Basin Plan water quality objectives. In addition, the Regional Board Basin Plan requires that the Board consider other standards, including the CTR and NTR, in implementing its narrative water quality objective. If this revision is included, it should be clarified that it does not affect the implementation of Basin Plans if those are more stringent.

We appreciate the opportunity to comment on the proposed SIP revisions. If you have any questions regarding our comments, please contact Betty Yee at (916) 464-4643 or Patricia Leary at (916) 464-4623.



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