



Winston H. Hickox
Secretary for
Environmental
Protection

State Water Resources Control Board

Executive Office

901 P Street • Sacramento, California 95814 • (916) 657-0941
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
FAX (916) 657-0932 • Web Site Address: <http://www.swrcb.ca.gov>



Gray Davis
Governor

TO: David Judson
Deputy Director
Office of Administrative Law
555 Capitol Mall, Suite 1290
Sacramento, CA 95814-4602

FROM: *Signed by Walt Pettit*
Walt Pettit
Executive Director
EXECUTIVE OFFICE

DATE: March 16, 2000

SUBJECT: POLICY FOR IMPLEMENTATION OF TOXICS STANDARDS FOR INLAND SURFACE WATERS, ENCLOSED BAYS, AND ESTUARIES OF CALIFORNIA

On March 2, 2000, the State Water Resources Control Board (SWRCB) approved Resolution No. 2000-015 adopting the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (Policy). This Policy establishes implementation procedures for discharges of priority pollutants to non-ocean surface waters of California. The majority of the priority pollutant standards will be established in the federal California Toxics Rule (CTR) to be promulgated by the U.S. Environmental Protection Agency (USEPA) in late March or early April 2000.

Pursuant to Government Code Section 11353, the regulatory provisions of the Policy are being submitted to the Office of Administrative Law (OAL) for approval. As required by that section, this submittal includes the following documents:

1. Seven copies of OAL Form 400 with the Clear and Concise Summary of Regulatory Provisions (Attachment 1);
2. A certification by the Chief Counsel of the SWRCB that the action was taken in compliance with all applicable procedural requirements of the Porter-Cologne Water Quality Control Act, Water Code Section 13000 et seq. (Attachment 2); and
3. The Administrative Record for the SWRCB proceedings on this matter (Attachment 3).

California Environmental Protection Agency

Statements regarding the necessity for the regulatory provisions are included as part of the Final Functional Equivalent Document (FED), which consists of the third public draft FED (dated January 31, 2000) and errata to that FED (dated March 1, 2000). The SWRCB's authority to adopt the Policy is contained in Water Code Sections 13140-13142.

We recommend that the attached regulatory summary be added to Title 23, Division 3, Chapter 22, titled "State Policy for Water Quality Control," as a new Section 2914: "Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California."

Finally, because the Policy is being coordinated with the federal CTR, it is important that the effective dates of the two actions are in close proximity. In addition, if the Policy does not become effective in advance of the effective date of the "Alaska rule," which is expected in early May, the State may be unable to implement the Policy for months or even years. The "Alaska rule" is a proposed federal regulation that, in general, will delay the effective date of State water quality standards actions until the USEPA formally acts to approve the action. Therefore, I respectfully request that OAL make every effort to ensure that the review and approval process for the Policy is completed within the initial 30 working day period.

If you have any questions regarding this submittal, please contact John M. Ladd, Assistant Division Chief, Division of Water Quality, at 657-1016.

Attachments (3)

NOTICE PUBLICATION/REGULATIONS SUBMISSION*(See instructions on reverse)*

For use by Secretary of State only

STD. 400 (REV. '4-99)

| | | | |
|--|---------------------------------|--------------------------|-----------------------------|
| OAL FILE NUMBERS | NOTICE FILE NUMBER Z- | REGULATORY ACTION NUMBER | EMERGENCY NUMBER |
| For use by Office of Administrative Law (OAL) only | | | |
| NOTICE | | REGULATIONS | |
| AGENCY WITH RULEMAKING AUTHORITY | | | AGENCY FILE NUMBER (If any) |

A. PUBLICATION OF NOTICE *(Complete for publication in Notice Register)*

| | | | | |
|--|--|--------------------------|-------------------------|-------------------------------|
| 1. SUBJECT OF NOTICE | | TITLE(S) | FIRST SECTION AFFECTED | 2. REQUESTED PUBLICATION DATE |
| 3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other | | 4. AGENCY CONTACT PERSON | TELEPHONE NUMBER () | FAX NUMBER (Optional) () |
| OAL USE ONLY | ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn | | NOTICE REGISTER NUMBER | PUBLICATION DATE |

B. SUBMISSION OF REGULATIONS *(Complete when submitting regulations)*

| | |
|------------------------------|--|
| 1a. SUBJECT OF REGULATION(S) | 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) |
|------------------------------|--|

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) *(Including title 26, if toxics-related)*

| | |
|---|--------|
| SECTION(S) AFFECTED <i>(List all section number(s) individually)</i> | ADOPT |
| | AMEND |
| | REPEAL |
| TITLE(S) | |

3. TYPE OF FILING

| | | | | |
|---|---|--|--|--|
| <input type="checkbox"/> Regular Rulemaking (Gov. Code, § 11346) | <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code, §§ 11349.3, 11349.4) | <input type="checkbox"/> Emergency (Gov. Code, § 11346.1(b)) | <input type="checkbox"/> Emergency Readopt (Gov. Code, § 11346.1(h)) | <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, § 11346.1) |
| <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Government Code §§ 11346.2 - 11346.9 prior to, or within 120 days of, the effective date of the regulations listed above. | | | | |
| <input type="checkbox"/> Print Only | <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100) | <input type="checkbox"/> Other (specify) _____ | | |

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE *(Cal. Code Regs. title 1, §§ 44 and 45)*5. EFFECTIVE DATE OF REGULATORY CHANGES *(Gov. Code, §§ 11343.4, 11346.1(d))*

| | | |
|--|--|--|
| <input type="checkbox"/> Effective 30th day after filing with Secretary of State | <input type="checkbox"/> Effective on filing with Secretary of State | <input type="checkbox"/> Effective other (Specify) _____ |
|--|--|--|

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

| | | |
|--|--|---|
| <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) | <input type="checkbox"/> Fair Political Practices Commission | <input type="checkbox"/> State Fire Marshal |
| <input type="checkbox"/> Other (Specify) _____ | | |

| | | | |
|-------------------|-------------------------|------------------------------|---------------------------|
| 7. CONTACT PERSON | TELEPHONE NUMBER () | FAX NUMBER (Optional) () | E-MAIL ADDRESS (Optional) |
|-------------------|-------------------------|------------------------------|---------------------------|

8.

I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE



TYPED NAME AND TITLE OF SIGNATORY

Clear and Concise Summary of Regulatory Provisions

Title 23, Chapter 22, “State Policy for Water Quality Control,” Section 2914, “Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California.”

On March 2, 2000, the State Water Resources Control Board adopted Resolution No. 2000-015, creating the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (Policy). The goal of the Policy is to establish a standardized approach for permitting discharges of toxic pollutants to non-ocean surface waters in a manner that promotes statewide consistency. The Policy applies to discharges of toxic pollutants into the inland surface waters, enclosed bays, and estuaries of California subject to regulation under the State's Porter-Cologne Water Quality Control Act (Division 7 of the Water Code) and the federal Clean Water Act. Such regulation may occur through the issuance of National Pollutant Discharge Elimination System (NPDES) permits, the issuance or waiver of waste discharge requirements, or other relevant regulatory approaches. The Policy does not apply to discharges of toxic pollutants from combined sewer systems or to the regulation of storm water discharges.

The Policy establishes: (1) implementation provisions for priority pollutant criteria promulgated by the U.S. Environmental Protection Agency (U.S. EPA) through the National Toxics Rule (NTR) (40 C.F.R. § 131.36) and through the California Toxics Rule (CTR) (40 C.F.R. § 131.38), and for priority pollutant objectives established by Regional Water Quality Control Boards (RWQCBs) in their water quality control plans (basin plans); (2) monitoring requirements for 2,3,7,8-TCDD equivalents; and (3) chronic toxicity control provisions. In addition, the Policy includes a description of the State's existing nonpoint source management approach, procedures for initiating site-specific objective development, and exceptions provisions. Terms are defined in Appendix 1 of the Policy. The specific, regulatory Policy provisions are summarized as follows:

(a) Establishing Water Quality-Based Effluent Limitations for Priority Pollutant Criteria/Objectives

- (1) Specifies the priority pollutant criteria and objectives, and their general application to beneficial uses designated in basin plans, to which the Policy applies.
- (2) Addresses data requirements and adjustments; specifies that the RWQCBs shall issue letters to all NPDES permittees requesting the data necessary to determine whether water quality-based effluent limitations are needed and to calculate the limits; authorizes a time schedule of not to exceed three years from the Policy's effective date for submittal of data; states that it is the discharger's responsibility to provide the necessary data; requires that criteria/objectives, and pollutant and flow data, are properly adjusted, applied, and expressed for the purposes of establishing water quality-based effluent limitations pursuant to the Policy.
- (3) Establishes provisions to determine whether a water quality-based effluent limitation for a priority pollutant is required in a discharger's permit (flowchart is provided in Appendix 2 of the Policy).

(4) Establishes four methods for calculating water quality-based effluent limitations for priority pollutants to be included in permits: derive from a Total Maximum Daily Load (TMDL); use a steady-state model; apply a dynamic model, and consider intake water pollutants; detailed procedures are established for the steady-state model method; specifies that more restrictive water quality-based effluent limitations (e.g., discharge prohibition) are required if necessary to protect beneficial uses or are otherwise required by law; establishes method for calculating effluent limitations where pollutants are so diluted by cooling water as to make monitoring impractical.

(5) Establishes procedures for applying translators to metals and selenium criteria/objectives; requires that the U.S. EPA conversion factor (listed in Appendix 3 of the Policy) be used as translators unless the discharger completes a site-specific translator study and proposes a site-specific translator within two years of permit issuance or reissuance; establishes general procedures for conducting the study and specifies interim permit requirements.

(6) Authorizes RWQCBs to consider granting mixing zones and dilution credits to be used in calculating water quality-based effluent limitations; establishes procedures for deriving a dilution credit; establishes conditions to be met in allowing a mixing zone and factors to be considered in determining whether to deny or significantly limit a mixing zone and dilution credit.

(7) Establishes procedures for determining the ambient background concentration of a priority pollutant for use in determining whether a water quality-based effluent limitation is required and in calculating a limit; specifies that the observed maximum of individual reported values be used, except that an arithmetic mean shall be used in the case of calculating a water quality-based effluent limitation for a priority pollutant that is intended to protect human health from carcinogenic effects.

(8) Establishes conditions under which a credit for intake water pollutants may be considered in calculating a water quality-based effluent limitation for a priority pollutant.

(b) Determining Compliance With Priority Pollutant Criteria/Objectives and Water Quality-Based Effluent Limitations for Priority Pollutant Criteria/Objectives

(1) Authorizes the RWQCBs to grant compliance schedules up to five years from permit issuance, reissuance, or modification to comply with water quality-based effluent limitations for CTR priority pollutants, and up to 15 years to develop and adopt a TMDL, and accompanying Waste Load Allocations and Load Allocations, for CTR priority pollutants; establishes conditions, including discharger justification, under which a compliance schedule may be granted for an existing discharger; requires compliance with CTR criterion-based effluent limitations within 10 years from the effective date of the Policy; requires compliance with TMDL-derived effluent limitations within 20 years from the effective date of the Policy; requires that a compliance schedule be accompanied by interim requirements in the permit.

(2) Establishes provisions for interim requirements under a compliance schedule, including a requirement for numeric interim limitations if the compliance schedule exceeds one year; establishes provisions for interim requirements under a schedule to submit data sufficient to establish water quality-based effluent limitations.

(3) Establishes a requirement for dischargers to conduct self-monitoring programs and a requirement for RWQCBs to specify monitoring requirements in permits; lists options for analytical methods for priority pollutants to be used; requires that laboratories monitoring

samples be certified by the Department of Health Services in accordance with Water Code Section 13176.

(4) Establishes that the discharger shall report with each analytical sample result two reporting levels, the Method Detection Limit (MDL) and the applicable Minimum Level (selected in accordance with the Policy); establishes procedures for selecting and using an ML from among the MLs established in Appendix 4 of the Policy; establishes conditions under which an ML that is not in Appendix 4 may be included in the discharger's permit; establishes protocols for reporting analytical sample results in relation to the required reporting levels (the MDL and the ML); establishes provisions for determining compliance with water quality-based effluent limitations for priority pollutants based on the reporting protocols, including a requirement to conduct a Pollutant Minimization Program under specified situations.

(c) *2,3,7,8-TCDD Equivalents*: Directs RWQCBs to require all NPDES permittees to monitor their effluents for the presence of the 17 congeners of 2,3,7,8-TCDD (dioxin) for specified periods; states that the results of this statewide monitoring effort will be assessed for the purpose of developing a multi-media control strategy for these chemicals in the future.

(d) *Toxicity Control Provisions*: Establishes minimum toxicity control provisions for implementing the narrative toxicity objectives for aquatic life protection in basin plans that supplement, not supersede, existing RWQCB toxicity requirements.

(e) *Special Provisions*

(1) Establishes a procedure for the RWQCBs to follow in considering the initiation of site-specific objective development for priority pollutants.

(2) Establishes provisions for granting categorical exceptions to meeting priority pollutant criteria/objectives determined to be necessary to implement control measures for resource or pest management conducted by public entities, or regarding drinking water, to fulfill statutory requirements; establishes provisions for granting case-by-case exceptions to meeting a priority pollutant criterion/objective or any other provision of the Policy where the exception will not compromise protection of enclosed bay, estuarine, and inland surface waters for beneficial uses and the public interest will be served.

(f) *Definition of Terms*: The Policy defines "acutely toxic conditions", "arithmetic mean", "average monthly effluent limitation", "best management practices", "bioaccumulative", "biologically-based receiving water flow", "carcinogenic", "coefficient of variation", "completely-mixed discharge", "dilution credit", "dilution ratio", "dynamic models", "effluent concentration allowance", "enclosed bays", "estimated chemical concentration", "estuaries", "existing discharger", "four-day average of daily maximum flows", "harmonic mean", "incompletely-mixed discharge", "infeasible", "inland surface waters", "load allocation", "long-term arithmetic mean flow", "maximum daily flow", "maximum daily effluent limitation", "median", "method detection limit", "minimum level", "mixing zone", "mutagenic", "new discharger", "objectionable bottom deposits", "ocean waters", "persistent", "pollutant minimization", "pollution prevention", "process optimization", "public entity", "source of drinking water", "standard deviation", "teratogenic", "toxicity reduction evaluation", "use attainability analysis", "1Q10", "7Q10", and "90th percentile of observed data".

STATE WATER RESOURCES CONTROL BOARD

ACTION TAKEN: Adoption of the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California

DOCUMENT NUMBER: State Water Resources Control Board Resolution No. 2000-015

I certify that adoption of the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California was carried out in compliance with all applicable procedural requirements of Division 7 (commencing with Section 13000) of the Water Code.

Date: March 16, 2000

Signed by Craig M. Wilson for
William R. Attwater
Chief Counsel