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October 8, 2012



Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Re: Revision to Proposed Amendment to the Recycled Water Policy Concerning Monitoring Requirements for Constituents of Emerging Concern

Dear Ms. Townsend:

Please accept the following comments on behalf of Heal the Ocean (HTO), a Santa Barbara-based citizens' action group whose focus is on ocean pollution, with wastewater infrastructure being a prime target for ocean pollution source control. HTO has been researching Constituents of Emerging Concern (CECs) for some years, and our discussion of those chemicals/constituents/contaminants – and wastewater treatment methods that reduce or eliminate them – is contained in our California Ocean Wastewater Discharge Inventory and Report (<http://www.healtheocean.org/research/wdi>), which our research staff spent some years compiling.

Heal the Ocean has been following the State's efforts to develop a monitoring program for CECs by participating in hearings held by the Southern California Coastal Water Research Project (SCCWRP) for its appointed Scientific Advisory Panel and by commenting with suggestions on how to improve draft recommendations of this Advisory Panel.

At issue is the State Water Resource Control Board (SWRCB)'s final revision of the amendment to the Recycled Water Policy – particularly Attachment A, which is slated for adoption by the SWRCB on October 16, 2012.

The stated purpose of this Policy revision is to “provide direction to the Regional Water Quality Control Boards (Regional Water Boards) on monitoring requirements for constituents of emerging concern (CECs) in recycled municipal water.”¹ It is difficult to conclude that the this policy provides any serious level of “direction” to the Regional Water Board since a significant portion of Attachment A continues to give the California Department of Public Health (CDPH) ultimate authority over monitoring for CECs in recycled water. The most

¹ California State Water Resources Control Board. “DRAFT Attachment A: Requirements for Monitoring Constituents of Emerging Concern for Recycled Water,” May 7, 2012, p. 1.

notable direction that the Attachment provides is the list of CECs and corresponding response levels/actions table. Unfortunately, the list of CECs is too short to offer anything close to a comprehensive monitoring program, and will surely be augmented by CDPH, while the corresponding response levels/actions table is vague on what “additional actions” CDPH and the Regional Water Boards may take if MEC/MLT ratios exceed 100.

Due to the lack of specificity included in Attachment A, the Regional Water Boards are left in the same positions – or less stringent positions – than they were prior to the development of this Policy. The Regional Water Boards are still directed to act on the recommendations from CDPH on the appropriate constituents for monitoring in recycled water projects. In contradiction to this direction, Attachment A says that the "Regional Water Boards *shall not issue requirements for monitoring of additional CECs*, (emphasis ours) beyond the requirements provided in this Policy." This directive actually hamstringing the Regional Water Boards.

In other words, this Attachment A does little to change current procedures; and unfortunately telegraphs a message to the Regional Water Boards doing *more* than is required by the State that they *cannot* monitor for additional CECs. . HTO believes the usefulness of Attachment A is questionable, and perhaps may be harmful.

In that CDPH has provided excellent guidance in the past, Heal the Ocean is encouraged that CDPH procedure takes precedence over anything described in the Policy or Attachment A. However, CDPH should not be required to engage in an in-depth evaluation of projects on a case by case basis in perpetuity, especially with the limited resources available to the State. The SWRCB must revisit Attachment A in at least three years with direct and comprehensive guidance from CDPH on the CECs that need inclusion in recycled water projects across the State. Ideally, CDPH will be finished with its own recycled water regulations, which can guide the development of the monitoring program.

The proposed monitoring regime does not provide any additional “direction” to the Regional Water Boards beyond what already exists. In fact, Attachment A hamstringing the Regional Water Boards and keeps final authority with CDPH to determine the specific components of any monitoring program for CECs. With so little additional clarity compared to the status quo, the SWRCB must revise Attachment A in at least three years in close consultation with CDPH. This will achieve the “direction” that the Recycled Water Policy was originally designed to provide.

Attachment A is far from a complete list of CECs necessary to achieve adequate protection of public health. While the *Final Report, Monitoring Strategies for Chemicals of Emerging Concern (CECs) in Recycled Water* from the Science Advisory Panel might be a useful (albeit costly) exercise, it is not a complete one. At the conclusion of the Report, the Panel states that their recommended list of CECs “represent a preliminary list based on the limited data that are presently available in California and on a number of qualifying assumptions discussed in the report.”²

Of particular concern is the matter of groundwater injection projects. Not only does the Science Advisory Panel state that this list is preliminary, but the four health-based CECs it

² Southern California Coastal Water Research Project. “Monitoring Strategies for Chemicals of Emerging Concern (CECs) in Recycled Water,” June 25, 2010, p. 74.

recommends is far fewer than anything that CDPH and the Regional Water Boards have required of past recycled water-based groundwater injection projects. The disconnect between what SWRCB is proposing and what CDPH has required in the past is disconcerting. Because of this, Heal the Ocean strongly maintains that Attachment A is inadequate as currently written to protect public health.

If the SWRCB is unwilling to expand the current list of CECs in Attachment A, then the SWRCB must revisit the Attachment in at least three years and rework the monitoring list in close consultation with CDPH.

Finally, Heal the Ocean is very disappointed with the public process used in the development of the Recycled Water Policy. While we appreciate SWRCB staff setting up a last-minute conference call with Heal the Bay, California Coastkeeper, and Heal the Ocean to discuss the changes to the second draft of Attachment A, this conference call should not have taken the place of proper procedure in the development of a public policy. The rushed public process made any formally written response to our comments impossible. HTO, along with other public groups and/or participants put a high value on agency responses because it allows for the reexamination of errors or misunderstandings in our comments. It should not have to be said that the SWRCB is *required* to go through the public process within certain time frames for draft review by the public, agency response to public comment, and finally the agency's answer to those comments, which provides the official reasoning for the agency's acceptance or rejection of policy issues raised.

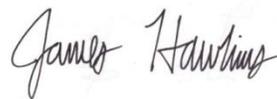
In the future, the SWRCB must not make timely adoption of policy a higher priority than a deliberative and open public process.

Thank you for this opportunity to comment.

Sincerely,



Hillary Hauser, Executive Director



James O. Hawkins, Associate Researcher