

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2000 - 015

ADOPTION OF THE POLICY FOR THE IMPLEMENTATION OF
TOXICS STANDARDS FOR INLAND SURFACE WATERS,
ENCLOSED BAYS, AND ESTUARIES OF CALIFORNIA (PROPOSED POLICY)

WHEREAS:

1. Section 303(c)(2)(B) of the Federal Clean Water Act (CWA) requires that states adopt numeric criteria for priority pollutants as part of the states' water quality standards.
2. In 1991, the State Water Resources Control Board (SWRCB) adopted the Inland Surface Waters Plan (ISWP) and the Enclosed Bays and Estuaries Plan (EBEP), in part, to comply with CWA section 303(c)(2)(B). The SWRCB amended the plans in 1993.
3. In 1994, the SWRCB rescinded the ISWP and the EBEP in response to a court ruling invalidating the plans. Since then, California has been without statewide water quality standards for the majority of priority pollutants for the State's non-ocean surface waters.
4. After rescission of the plans, the SWRCB and the U.S. Environmental Protection Agency (U.S. EPA) agreed to pursue a collaborative approach to reestablish the regulatory framework of the rescinded ISWP and EBEP and to bring California into compliance with CWA section 303(c)(2)(B). This approach consists of two phases. In Phase 1, the U.S. EPA will promulgate numeric water quality criteria for priority pollutants for California in accordance with CWA section 303(c)(2)(B), and the SWRCB will adopt statewide measures to implement those criteria in a statewide policy. In Phase 2, the SWRCB will consider the adoption of appropriate statewide water quality objectives for toxic pollutants.
5. The U.S. EPA is scheduled to promulgate the final California Toxics Rule (CTR) (proposed at 62 Federal Register 42160-42208, August 5, 1997) to be codified at 40 Code of Federal Regulations section 131.38 in March or April 2000. The CTR will establish statewide water quality criteria for priority toxic pollutants for California.
6. The SWRCB may formulate and adopt State policy for water quality control in accordance with California Water Code sections 13140-13147.
7. The SWRCB prepared and circulated drafts of the Functional Equivalent Document (FED) for a proposed Policy to implement the draft CTR in accordance with the provisions of the California Environmental Quality Act (CEQA) and California Code of Regulations, title 14, section 15251(g), and title 23, sections 3775-3782, as follows:
 - a. The First Public Draft of the proposed Policy and FED was released for public review on September 11, 1997; a Supplement to the FED was released on October 16, 1997; and an Addendum to the Supplement was released on October 28, 1997.

- b. The Second Public Draft of the proposed Policy and FED was released for public review on November 12, 1999; Appendix G to the 1999 FED (responses to public comments on the first draft Policy) was released on December 7, 1999.
 - c. The Third Public Draft of the proposed Policy was released for public review on January 24, 2000; the third draft of the FED was released for public review on January 31, 2000; Appendix G to the 2000 FED (responses to public comments on the second draft Policy) was released on February 11, 2000.
 - d. Supplement 1 to Appendix G to the November 12, 1999 FED and Appendix G to the January 31, 2000 FED were released on February 11, 2000.
 - e. Supplement 2 to Appendix G to the November 12, 1999 FED and Supplement to Appendix G to the January 31, 2000 FED will be released at the March 2, 2000 SWRCB Meeting.
5. The SWRCB has conducted public hearings in Sacramento on November 17, 1997 and in Newport Beach on December 3, 1997 and a public workshop in Sacramento on December 6, 1999 to solicit comments regarding the proposed Policy. The SWRCB has reviewed and carefully considered all comments received on the first, second, and third drafts of the proposed Policy and FED. The SWRCB considered the information contained in the FED prior to approval of the proposed Policy.
 6. The SWRCB submitted the first and second drafts of the proposed Policy and FED for external scientific peer review of the scientific basis for the proposed Policy under the requirements of Health and Safety Code section 57004.
 7. By letter dated January 21, 2000 from Alexis Strauss, Director of the Water Division at U.S. EPA, Region 9, to Walt Pettit, SWRCB Executive Director (January 21 letter), the U.S. EPA notified the SWRCB of the more important changes that U.S. EPA staff has proposed to the U.S. EPA Administrator for the final CTR. The SWRCB has reviewed the proposed CTR changes, and it finds that they do not require revisions to the proposed Policy or FED.
 8. Further, the SWRCB does not anticipate that any additional changes to the final CTR will require the SWRCB to revise the adopted Policy (Policy) or final FED. If, however, the final CTR is substantially changed from the CTR as proposed and with the changes referenced in the January 21 letter, and if these changes will require revisions in the Policy or major revisions in the final FED, the SWRCB will reconsider the Policy.
 9. In order to expedite the effective date of the Policy, the SWRCB has decided to adopt the Policy now, but to delay its effective date until the effective date of the CTR.
 10. In addition, the regulatory provisions of the Policy will not become effective until they are approved by the Office of Administrative Law (OAL) in accordance with Government Code section 11349.3(a).

11. The SWRCB makes the following specific findings regarding its CEQA responsibilities:

a. The Third Public Draft FED has been completed in compliance with CEQA (Public Resources Code section 21000 et seq.), the CEQA guidelines, and the procedures of the State of California for Certified Regulatory Programs (Public Resources Code section 21080.5, California Code of Regulations, title 14, sections 15250-15253, and title 23, sections 3775-3782); the SWRCB has reviewed and considered the Third Public Draft FED prior to its decision to approve the proposed Policy; and the Third Public Draft FED reflects the independent judgment of the SWRCB.

b. The Third Public Draft FED identified potentially significant adverse environmental effects related to only one Policy provision. These potential effects stem from Policy provisions allowing RWQCB authorization of a longer compliance schedule where necessary to develop and implement a Total Maximum Daily Load (TMDL) and accompanying wasteload allocations and load allocations. As compared to the CTR, under the Policy dischargers could be allowed up to ten additional years to accommodate development of TMDLs. Adverse environmental effects could occur during this period because water quality standards for priority pollutants established to protect human health and aquatic life may not be met. Such potential adverse effects could occur to surface and ground water quality; endangered, threatened, or rare species; locally designated species or natural communities; wetland or other fish and wildlife habitat; human health; or recreational opportunities.

c. The Policy contains provisions to lessen or avoid potentially significant adverse effects on the environment stemming from the TMDL compliance schedule provisions. These provisions include the following:

(1) The compliance schedule provisions are narrowly written to apply only to those situations where the discharger demonstrates that it is infeasible to achieve immediate compliance with the CTR criteria;

(2) The compliance schedule provisions do not apply to new discharges;

(3) The discharger must submit the following justification before compliance schedules may be authorized in a permit:

(a) Documentation that diligent efforts have been made to quantify pollutant levels in the discharge and the sources of the pollutant in the waste stream, and the results of those efforts,

(b) Documentation of source control and/or pollution minimization efforts currently underway or completed,

(c) A proposed schedule for additional source control measures, pollutant minimization actions, or waste treatment (i.e., facility upgrades), and

(d) A demonstration that the proposed schedule is as short as practicable;

(4) The schedule of compliance must be as short as practicable and must include specified required actions that demonstrate progress toward attainment of the CTR criterion or effluent limitation;

(5) Longer compliance schedules for TMDL development will be authorized only if the discharger has made appropriate commitments to support and expedite the development of the TMDL;

(6) If a compliance schedule is granted, the Policy requires that the Regional Water Quality Control Board (RWQCB) establish interim requirements and dates for their achievement in the National Pollutant Discharge Elimination System (NPDES) permit;

(7) If the compliance schedule exceeds one year, the RWQCB must establish limitations for the priority pollutant in the NPDES permit and may also impose interim requirements to control the pollutant, such as pollutant minimization and source control measures;

(8) Numeric limitations must be based on current treatment facility performance or existing NPDES permit limitations, whichever is more stringent; and

(9) The Policy requires each discharger to report, in writing, its compliance or noncompliance with the interim requirements. Both the interim requirements and reporting requirements are fully enforceable NPDES permit conditions.

d. Alternatives to the Policy provisions for TMDL-based compliance schedules for implementing the CTR identified in the FED are infeasible. These alternatives are discussed below:

Alternative 1. No Action. If the SWRCB does not adopt Policy provisions for compliance schedules for implementation of the CTR, compliance schedules for discharges which receive effluent limitations that are not based on TMDLs are substantially the same. Both the CTR and the Policy would allow compliance schedules of up to five years from NPDES permit issuance, reissuance, or modification with a maximum deadline of ten years from the effective date of the CTR or Policy, respectively. (It is anticipated that the Policy and CTR effective dates will differ only by a few weeks.) There is no significant difference in these time frames; therefore, no significant impacts to the environment would result.

Under this alternative, longer compliance schedules to coincide with TMDL schedules could not be authorized by the RWQCBs. The SWRCB finds that this is not a feasible alternative because eliminating these compliance schedules for TMDLs is unrealistic. Currently, over 500 water bodies are listed as impaired on the CWA section 303(d) list. More than 1400 impairments are cited for these waters. Existing U.S. EPA policy requires that the states develop schedules for TMDL development of up to 13 years, beginning with the 1998 lists. U.S. EPA has proposed, however, in draft TMDL regulations published in August 1999, that

the states develop schedules for establishing TMDLs as expeditiously as practicable, but no later than 15 years from the date of the initial listing. The draft regulations also contemplate that each TMDL include an implementation plan containing a timeline, including interim milestones, for implementing control actions and management measures necessary to achieve the wasteload allocations and load allocations. The implementation plan also must include an estimate of the time required to achieve water quality standards. In the draft rule, U.S. EPA recognizes that relatively longer time frames may be necessary for problems that are extremely difficult to solve. The Policy's TMDL compliance schedule provisions are consistent with U.S. EPA's direction.

Alternatives 2-5. Adopt a compliance schedule of: up to 3 years from the effective date of the proposed Policy (Alternative 2); up to 10 years from the effective date of the proposed Policy (Alternative 3); up to 15 years from the effective date of the proposed Policy (Alternative 4); or up to 5 years from the date of permit issuance, reissuance, or modification (Alternative 5).

The SWRCB finds that these are not feasible alternatives for TMDL-based compliance schedules for the reasons explained under Alternative 1.

e. The SWRCB finds that there are no feasible alternatives or additional feasible mitigation measures available to the SWRCB that would substantially lessen any potentially significant adverse environmental effects associated with the Policy provisions authorizing longer compliance schedules for TMDLs.

f. The SWRCB has eliminated or substantially lessened all significant adverse effects on the environment associated with the Policy provisions authorizing longer compliance schedules for TMDLs. The remaining Policy provisions will not have a significant effect on the environment.

g. To the extent that the potential for any impacts remains associated with longer compliance schedules for TMDLs, the SWRCB finds that there are overriding considerations that outweigh any adverse environmental effects that may potentially occur due to the TMDL-based compliance schedules provisions of the Policy.

Implementing TMDLs for priority pollutants may result in greater overall improvements to water quality because all significant sources of a pollutant will be addressed. If a TMDL is under development, the discharger must still immediately comply with CTR-based effluent limitations if it is feasible to do so. If it is infeasible, the discharger must comply with RWQCB interim requirements that demonstrate progress toward meeting the CTR criterion or effluent limitation. The Policy provides that the RWQCB can impose requirements for source control and pollution minimization/prevention during the compliance schedule period. However, to require the discharger to install expensive treatment controls to comply with a CTR-based effluent limitation while the TMDL is under development could result in unnecessary costs and unnecessary secondary environmental effects due to construction of the treatment controls.

THEREFORE BE IT RESOLVED THAT:

The SWRCB:

1. Approves the FED for the proposed Policy.
2. Adopts the proposed Policy, provided that the Policy shall not go into effect unless and until the final CTR is effective and the regulatory provisions of the Policy have been approved by OAL in compliance with the Administrative Procedure Act.
3. Intends to reconsider the Policy if the final CTR is substantially changed from the CTR, as proposed and with the changes referenced in the January 21 letter, and if these changes require revisions in the Policy or major revisions in the final FED.
4. Authorizes the Executive Director or his designee to transmit the Policy to OAL for review and approval in compliance with the Administrative Procedure Act and subsequently to transmit the OAL-approved Policy to the U.S. EPA for review and approval in compliance with section 303(c) of the CWA.
5. Intends to reassess and modify, as appropriate, the Minimum Level values in Appendix 4 of the Policy during triennial reviews to consider and reflect the availability and use of more sensitive analytical methods. Prior to adoption of new a Minimum Level, the SWRCB will consider its environmental and economic effects.
6. Intends to reassess and modify, as appropriate, applicable water quality standards for water bodies that may depend on the discharge of wastewater to support its beneficial uses, including an evaluation of the appropriateness of priority pollutant criteria established by the CTR during Phase 2 of the development of the ISWP and the EBEP.
7. Requires the RWQCBs to report annually to the SWRCB on progress in implementing priority pollutant standards in accordance with the Policy.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on March 2, 2000.

/s/
Maureen Marché
Administrative Assistant to the Board