

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2004-0002

ADOPTING THE AMENDED CONSOLIDATED TOXIC HOT SPOTS
CLEANUP PLAN AND APPROVING THE FUNCTIONAL EQUIVALENT DOCUMENT

WHEREAS:

1. In 1989, the California Legislature established the Bay Protection and Toxic Cleanup Program (BPTCP) to provide protection for present and future beneficial uses of bay and estuarine waters of California, identify and characterize toxic hot spots, and plan for toxic hot spot cleanup or other remedial or mitigation actions.
2. California Water Code (Water Code) section 13394 required the State Water Resources Control Board (SWRCB) and the Regional Water Quality Control Boards to develop Regional and Consolidated Toxic Hot Spot Cleanup Plans by June 30, 1999.
3. On April 29, 1999, the Central Valley Regional Water Quality Control Board (CVRWQCB) approved a Regional Toxic Hot Spot Cleanup Plan that identified three toxic hot spots related to pesticides (Resolution No. 99-001). Previously, on February 22, 1999, CVRWQCB requested a variance from SWRCB to address pesticide regulation for the three pesticide toxic hot spots under the federal Clean Water Act (CWA) section 303(d) Total Maximum Daily Load (TMDL) process instead of the BPTCP.
4. On June 17, 1999, SWRCB adopted Resolution No. 99-065 adopting the Consolidated Statewide Toxic Hot Spots Cleanup Plan (Statewide Plan) and approving three site-specific variances to allow CVRWQCB to address pesticide regulation under CWA section 303(d) TMDL process.
5. In 1999, a lawsuit was filed by the San Francisco BayKeeper (now Deltakeeper) and related parties challenging, among other things, the site-specific variances for pesticides.
6. In October 2001, the Sacramento County Superior Court entered a judgment in favor of the petitioners and issued a writ of mandate directing that the site-specific variances for the pesticide toxic hot spots identified in the Statewide Plan be vacated and set aside, and further directing that CVRWQCB and SWRCB undertake the necessary actions to prepare and submit to the Legislature an amended cleanup plan for the pesticide toxic hot spots in compliance with Water Code section 13394.
7. On November 15, 2001, SWRCB vacated and set aside the site-specific variances in the Statewide Plan.
8. On March 13, 2003, CVRWQCB adopted the final amended cleanup plans through Resolution R5-2003-0034, which satisfy all the required elements specified in the October 2001 Sacramento Superior Court writ of mandate and in Water Code section 13394. The amended cleanup plans for the two agriculture-related pesticide hot spots establish a time schedule for the CVRWQCB to adopt TMDLs and basin plan amendments implementing the TMDLs. The basin plan amendments will include numeric water quality pesticide objectives, monitoring, and control actions to remedy the hot spots.
9. SWRCB prepared and circulated a draft Functional Equivalent Document in accordance with the provisions of the California Environmental Quality Act and Title 14, California

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Code of Regulations section 15251 (g) that describes the proposed amendments to the plan and evaluates the effects the amended plans could have.

10. In compliance with Water Code section 13147, SWRCB held a public hearing in Sacramento on November 4, 2003 where comments were received on the revised plans.
11. After the CVRWQCB adopted the revised cleanup plans, on July 11, 2003 the CVRWQCB adopted Resolution No. R5-2003-0105, which conditionally waives waste discharge requirements for discharges from irrigated lands within the Central Valley Region.
12. Resolution No. R5-2003-0105 imposes special conditions where an agricultural discharge is causing or contributing to a violation of any applicable water quality objective. Upon written notice from the CVRWQCB Executive Officer, the affected discharger or coalition group must submit a Management Plan that evaluates the effectiveness of existing management practices, identifies additional actions, and includes a monitoring plan and implementation schedule to address the violation.
13. Under the BPTCP, the CVRWQCB has already determined that the two agriculture-related pesticide toxic hot spots cause seasonal water column toxicity violations.
14. SWRCB staff determined that adoption of the proposed Consolidated Hot Spots Cleanup Plan will not have significant adverse effects on the environment.
15. SWRCB received comments from interested persons and prepared responses to those comments.
16. The regulatory provisions of the Water Quality Control Policy do not become effective until they are approved by the Office of Administrative Law.

THEREFORE BE IT RESOLVED THAT THE SWRCB HEREBY:

1. Adopts the draft amended Consolidated Toxic Hot Spots Cleanup Plan (Attachment) and approves the draft Functional Equivalent Document, with the understanding that the CVRWQCB Executive Officer will require affected dischargers or coalition groups to submit Management Plans, consistent with Resolution No. R5-2003-0105, Attachments B or C, Technical Report B.6, to remedy or restore the two agriculture-related pesticide toxic hot spots by a specified date.
2. Directs the Executive Director or designee to submit the amended Consolidated Toxic Hot Spots Cleanup Plan to the Legislature.
3. Directs the Executive Director or designee to submit the amended Consolidated Toxic Hot Spots Cleanup Plan to the Office of Administrative Law.

CERTIFICATION

The undersigned, Clerk 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 January 22, 2004.


Debbie Irvin
Clerk to the Board