

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION NO. R5-2003-0034

RESOLUTION APPROVING REVISED AMENDED REGIONAL TOXIC HOT SPOT
CLEANUP PLANS FOR DIAZINON ORCHARD DORMANT SPRAY, URBAN
PESTICIDES, AND IRRIGATION RETURN FLOW PESTICIDES

WHEREAS, in 1989, the California Legislature established the Bay Protection and Toxic Cleanup Program (Bay Protection Program) to: 1) provide protection for present and future beneficial uses of bay and estuarine waters of California, 2) identify and characterize toxic hot spots, 3) plan for toxic hot spot cleanup or other remedial or mitigation actions, and 4) develop prevention and control strategies for toxic pollutants that will prevent creation of new toxic hot spots or perpetuation of existing ones within the bays and estuaries of the state; and

WHEREAS, California Water Code (Water Code) Section 13394 required the State Water Resources Control Board (State Water Board) and the Regional Boards to develop Regional and Consolidated Toxic Hot Spot Cleanup Plans by 30 June 1999; and

WHEREAS, a Water Quality Control Policy for Guidance on the Development of Regional Toxic Hot Spot Cleanup Plans was adopted by State Water Board on 2 September 1998; and

WHEREAS, on 29 April 1999, the Regional Board approved a Regional Toxic Hot Spot Cleanup Plan that identified three toxic hot spots related to pesticides (Resolution No. 99-001). Previously, on 22 February 1999, the Regional Board had requested a variance to allow the Regional Board to address pesticide regulation for the three pesticide toxic hot spots under the Clean Water Act Section 303(d) Total Maximum Daily Load process instead of the Bay Protection Program; and

WHEREAS, on 17 June 1999, State Water Board adopted Resolution No. 99-065 adopting the Consolidated Statewide Toxic Hot Spot Cleanup Plan (Statewide Plan) and approving three site-specific variances to allow the Regional Board to address pesticide regulation under the Clean Water Act Section 303(d) Total Maximum Daily Load process; and

WHEREAS, in 1999, a lawsuit was filed by the San Francisco BayKeeper (now Deltakeeper) and Bill Jennings (petitioners) challenging, among other things, the site-specific variances for pesticides; and

WHEREAS, 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 the Regional Board and State Water Board 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 § 13394; and

WHEREAS, on 15 November 2001, the State Water Board vacated and set aside the site specific variances in the Statewide Plan; and

WHEREAS, on 15 April 2002, the court approved a compliance schedule that required the Regional Board to adopt amended cleanup plans for the pesticide toxic hot spots by 31 December 2002 and further requires the State Water Board to adopt and submit an amendment to the Statewide Plan including these cleanup plans to the Office of Administrative Law by 1 September 2003; and

WHEREAS, after due notice and public hearing, the Regional Board on 5 December 2002 adopted amended cleanup plans through Resolution R5-2002-0200 and transmitted Resolution R5-2002-0200 to the State Board; and

WHEREAS, Resolution R5-2002-0200 reflected the Regional Board's desire to have the opportunity to consider revisions to the amended cleanup plans adopted on 5 December 2002 if the court-approved compliance schedule could be modified to permit such consideration; and

WHEREAS, the compliance schedule was thereafter modified to permit the Regional Board to consider revisions to the amended cleanup plans at its March 2003 meeting; and

WHEREAS, Regional Board staff prepared draft revised amended cleanup plans and, on 28 January 2003, notice was given to all interested persons of the availability of draft revised amended cleanup plans; and

WHEREAS, the Regional Board received comments from interested persons and prepared responses to those comments; and

WHEREAS, notice of a public hearing on the draft revised amended cleanup plans was sent to all interested persons and published in accordance with applicable law; and

WHEREAS, the Regional Board held a public hearing on 13 March 2003, for the purpose of receiving testimony on the draft revised amended cleanup plans; and

WHEREAS, the amended cleanup plans must also be adopted by the State Water Board, incorporated as an amendment into the Statewide Plan and approved by the Office of Administrative Law (OAL) before becoming effective; and

WHEREAS, the Regional Board finds that the draft revised amended cleanup plans were developed in accordance with Water Code section 13394.

THEREFORE BE IT RESOLVED, that after considering the entire record, including oral testimony at the hearing, the Regional Board approves the revised amended cleanup plans as set forth in Attachment A; and

RESOLVED that the Executive Officer is directed to withdraw from the State Water Board the amended cleanup plans adopted on 5 December 2002 through Resolution R5-2002-0200 and to forward copies of the revised amended cleanup plans set forth in Attachment A to the State Water Board for consideration and incorporation into the Statewide Plan, in accordance with the requirements of Section 13394 of the California Water Code; and

RESOLVED, that if during the approval process the State Water Board or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Regional Board of any such changes; and

I, THOMAS R. PINKOS, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Central Valley Region, on 13 March 2003

THOMAS R. PINKOS, Executive Officer