

ITEM: 24

SUBJECT: Proposed Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (the "Basin Plan") for the Control of Diazinon and Chlorpyrifos

BOARD ACTION: Adoption of a resolution approving the Proposed Basin Plan Amendment and Approval of the Substitute Environmental Documentation

BACKGROUND: Board Staff has developed a proposed Basin Plan Amendment (Proposed Amendment) that would establish numeric water quality objectives and a control program for the pesticides diazinon and chlorpyrifos in multiple water bodies in the Sacramento and San Joaquin River Basins. Diazinon and chlorpyrifos are insecticides widely used in agriculture in the Central Valley. They were formerly used in urban settings, until the recent cancellation of almost all of their nonagricultural uses. Diazinon and chlorpyrifos have been found in surface waters at concentrations that are toxic to aquatic life and that exceed the water quality standards, thus resulting in several water bodies being listed on the 303(d) list of impaired water bodies due to diazinon and/or chlorpyrifos.

Generally speaking, the federal Clean Water Act requires that the Board establish Total Maximum Daily Loads (TMDLs) to address pollutant exceedances that result in water quality impairments (i.e., federal Clean Water Act section 303(d) listings). However, if the Board can demonstrate that other pollution control requirements will successfully address an impairment in a timely manner, then a TMDL is not necessary. The Proposed Amendment will establish pollution control requirements for 31 water bodies that are currently on the 303(d) list due to diazinon and/or chlorpyrifos impairments. In developing the Proposed Amendment and working with stakeholders, Staff has determined that an Amendment which establishes clear requirements implementing existing State authority, primarily through the Irrigated Lands Regulatory Program, can effectively resolve these water quality impairments in a more straightforward manner without the need to establish TMDLs.

The Board must demonstrate to USEPA that the impairments can and will be addressed without the establishment of TMDLs; this demonstration is referred to as a "category 4b demonstration" (in reference to a Clean Water Act section 303(d)/305(b) Integrated Report category for water bodies with impairments being addressed by existing regulatory programs and thus not needing TMDLs). Category 4b demonstrations need to be approved by USEPA in order to eliminate the need for the Board to establish TMDLs. The Staff Report includes a Category 4b Demonstration that shows how the regulatory requirements established in the Proposed Amendment meet the expectations stated in USEPA guidance.

Previous amendments to the Basin Plan have established control programs, including water quality objectives and TMDLs for diazinon and chlorpyrifos in the Sacramento and Feather Rivers, the San Joaquin River, and the Sacramento-San Joaquin Delta. The Proposed Amendment contains water quality objectives, and a control program similar to those previously established, but extended to additional water bodies.

The geographic scope, or Project Area, for the Proposed Amendment is the

Sacramento and San Joaquin River Basins below the major dams, since all the water quality impairments (Clean Water Act section 303(d) listings) for these pesticides are at lower elevations, where there is the most pesticide use and runoff from agricultural and urban sources. The Proposed Amendment would establish water quality objectives for diazinon and chlorpyrifos that would apply to all water bodies in the Project Area that have designated or existing aquatic life beneficial uses and for 31 specifically-named water body segments that are on the Clean Water Act section 303(d) list of impaired water bodies due to concentrations of diazinon and/or chlorpyrifos that exceed water quality standards.

The Proposed Amendment would establish provisions to control all discharges for these pesticides so that future impairments are prevented or can be quickly addressed. The Proposed Amendment also contains provisions to address potential replacement pesticides.

The Proposed Amendment contains monitoring requirements for municipal storm water, domestic wastewater, and agricultural nonpoint source dischargers. The proposed monitoring requirements for nonpoint sources allow representative monitoring which can be used to assess all of the water bodies for which water quality objectives are established.

The Proposed Amendment will be implemented through existing Central Valley Water Board regulatory programs. The implementation of the proposed Basin Plan Amendment, in coordination with regulation of pesticide use by the California Department of Pesticide Regulations, the United States Environmental Protection Agency, and the county agricultural commissioners, is expected to result in diazinon and chlorpyrifos concentrations that meet water quality standards throughout the Sacramento and San Joaquin River Basins.

Numerous stakeholder meetings were held over the last few years to discuss pesticide Basin Plan Amendments and specific provisions in potential Basin Plan Amendment language.

A previous draft of the Proposed Amendment along with a supporting Staff Report was released for public review and comment in March 2013 for a 75 - day comment period. A Board Hearing was held in April 2013 to hear oral comments on the proposed Amendment. In response to comments received on the March 2013 draft, Staff made changes to the Proposed Amendment and Staff Report. A revised Proposed Amendment and supporting Staff Report, including responses to comments on the March 2013 draft, were released in January 2014 for a 45-day comment period.

Agenda materials for the adoption hearing include a draft final Staff Report, draft Resolution for adopting the proposed Amendment, and responses to public comments received within the two public comment periods. The enclosed draft final Staff Report, including the Proposed Amendment language in Appendix C, shows the changes since the public review version dated 2014. The final staff proposal for the Amendment language is contained in the attachment to the draft Resolution.

ISSUES:

Environmental and fishing groups claim that the Proposed Amendment does not contain an adequate demonstration that the diazinon and chlorpyrifos

impairments will be addressed without the establishment of TMDLs, and that TMDLs are still required for diazinon and chlorpyrifos impairments. Staff contends that the Proposed Amendment does, in fact, contain adequate regulatory controls to ensure the impairment are addressed, and suggests that this contention is supported by the fact that regulatory programs such as the Irrigated Lands Regulatory Program has proven successful at rectifying numerous diazinon and chlorpyrifos impairments.

CVCWA has stated that the Proposed Amendment should include revisions to the allocations in existing TMDLs in order to eliminate ambiguities in the Basin Plan that currently suggest that permit limits (and their attendant monitoring provisions) are required even when these pesticides are not present in the discharge at concentrations with the potential to cause exceedances in receiving water. Staff's response is that this is outside of the scope of the Proposed Amendment, but that the Board can look into clarifying this language in the future.

Some stakeholders have questioned the necessity to establish requirements in the Basin Plan when the Irrigated Lands Regulatory Program already has its own requirements and schedules established for developing and implementing management plans. Staff's response is that having the requirements in the Basin Plan will provide clarity and greater assurance that the impairments will be addressed in a timely manner.

The water bodies to which the water quality objectives and implementation provisions are proposed include some water bodies which are to some degree constructed and agriculturally dominated, and do not have beneficial uses specifically designated in the Basin Plan. Some stakeholders have suggested that it is inappropriate to establish water quality objectives for these water bodies. Staff's general response is that these are existing uses in the specifically-named water bodies, and having objectives and implementation provisions specifically established for these water bodies is necessary to provide assurance that the impairments will be addressed in a timely manner.

Storm water, agricultural and wastewater dischargers all have stated objections and concerns about the potential expenses and necessity of the proposed monitoring requirements, especially the proposed requirements to monitor for potential replacement products.

Dischargers have also expressed concern about potential compliance time frames which they state may not be consistent with existing policies and permits. In response to these concerns, staff has changed the Basin Plan to rely on compliance time frames established in existing plans and policies, but contains a backstop of no longer than 10 years where compliance timeframes are not otherwise established.

RECOMMENDATION Adopt the Resolution

Mgmt. Review _____

Legal Review __PEP__

27/28 March 2014

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