



CVCWA

Central Valley Clean Water Association

Representing Over Fifty Wastewater Agencies

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February 18, 2014

Via Electronically Only

Mr. Daniel McClure
California Regional Water Quality Control Board
Central Valley Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA
Daniel.mcclure@waterboards.ca.gov

SUBJECT: Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins for the Control of Diazinon and Chlorpyrifos

Dear Mr. McClure:

The Central Valley Clean Water Association (CVCWA) appreciates the opportunity to comment on the proposed amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan) for the Control of Diazinon and Chlorpyrifos. CVCWA is a non-profit association of public agencies located within the Central Valley region that provide wastewater collection, treatment, and water recycling services to millions of Central Valley residents and businesses. We approach these matters with the perspective of balancing environmental and economic interests consistent with state and federal law. In this spirit, we provide the following comments regarding the proposed amendments to the Basin Plan as they impact CVCWA's members.

I. Correct Existing Basin Plan Language

As a preliminary matter, it is important for the Central Valley Regional Water Quality Control Board (Regional Board) to understand that CVCWA's members rarely see detections for these two pesticides in wastewater effluent, as both pesticides have been USEPA-banned from

residential uses for the past decade (chlorpyrifos in 2002 and diazinon in 2004). And where there are limited detections, the concentrations are very low and almost always below the proposed objectives. Thus, municipal wastewater is a *de minimus* source of diazinon and chlorpyrifos in the Sacramento River and San Joaquin River watersheds.

Considering this backdrop, CVCWA recommends that the scope of the proposed Basin Plan amendments be expanded to include revisions to existing total maximum daily load (TMDL) provisions contained in the Basin Plan. Specifically, current language in the Basin Plan implies that numeric water quality-based effluent limitations (WQBELs) are required in NPDES permits for municipal wastewater dischargers to implement wasteload allocations (WLAs). This requirement is imposed regardless if diazinon or chlorpyrifos are actually found at levels with reasonable potential to cause or contribute to a violation of adopted water quality objectives. (See, e.g., Basin Plan, p. IV 36.04.) CVCWA disagrees with this approach and believes that the Basin Plan needs to be revised further to eliminate the need for WQBELs to implement WLAs. Such limitations are only necessary if the discharge is found to have reasonable potential to cause or contribute to a violation of a water quality objective.

CVCWA's position is consistent with the law. With respect to application of WLAs, the federal regulations state that when developing WQBELs, such limits must be "consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA . . ." (40 C.F.R. § 122.44(d)(1)(vii).) The term "when developing" presumes that the need for WQBELs has first been triggered by a proper reasonable potential analysis as is required by other federal regulatory sections preceding the one in question. (See 40 C.F.R. § 122.44(d)(1)(ii), (iii).) In such instances where WQBELs are necessary, such limitations must then be consistent with the assumptions and requirements of applicable WLAs. The federal regulations do not specifically require, or imply, that WQBELs are required for all pollutants for which a WLA exists. Thus, the proposed Basin Plan amendments should be expanded to correct the language in existing TMDLs.

II. Revise Proposed Basin Plan Amendment Language

In general, and as indicated above, CVCWA believes that issues with respect to diazinon and chlorpyrifos are from nonpoint sources of pollution and not municipal wastewater, as residential uses were banned a decade ago. Accordingly, the inclusion of municipal wastewater as part of this implementation program is questionable. To the extent that municipal wastewater may have rare detections of either of these pesticides, standard NPDES permitting practices would address such issues. For example, if either pesticide were detected in effluent at a level that would cause or contribute to a violation of the proposed applicable water quality objective, the Regional Board would then be required to adopt a WQBEL into the NPDES permit. The WQBEL must be set at a level that would be protective of water quality. (See, e.g., 40 C.F.R. § 122.44(d)(1).) Considering standard permitting practices, CVCWA sees no value in specifically including discharges from municipal wastewater in the proposed Basin Plan

amendments. Thus, all references to municipal wastewater should be removed from the proposed amendments.

Further, CVCWA has significant concerns with several provisions. Our comments on the specific provisions are provided here.

1. Provision 2, page C-5: This provision implies that municipal dischargers are able to control the use of pesticides by its users to avoid the presence of pesticides in wastewater effluent. This is not the case. While municipalities can encourage consumers to implement proper practices and not dump household pesticides into the sewer system, municipalities have no regulatory control over the use of pesticides. The California Department of Pesticide Regulation has exclusive authority with respect to the registration and use of pesticides in California. Thus, the California Department of Pesticide Regulation must ensure that when it registers pesticides for use in California, such pesticides will not be harmful to the environment. Further, because municipalities cannot control actions by others, this provision should be limited in application to those dischargers that have direct control over their use of a pesticide.
2. Provision 3, page C-5: This provision proposes to include a time schedule for compliance with water quality objectives for diazinon and chlorpyrifos for five years. Rather than including a specific time schedule within the Basin Plan amendment, CVCWA recommends that existing compliance schedule policies apply. In other words, should a municipal discharger have reasonable potential to discharge diazinon or chlorpyrifos at a level that would cause or contribute to a violation of water quality objective, and a WQBEL is then adopted into the permit, time for compliance with the WQBEL should be governed by the State Water Resources Control Board's *Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits* (Compliance Schedule Policy). Under this policy, the discharger needs to provide the Regional Board with a proposed schedule that includes necessary justification for the time requested. Then, when adopting the schedule into the permit, the Regional Board must ensure that the schedule is as short as possible, but cannot exceed ten years from when the new numeric water quality objective is adopted. Thus, should the Regional Board adopt the proposed water quality objectives in March of 2014, the ultimate backstop for compliance would be March of 2024. However, as a practical matter, individual permittees would need to propose a schedule for compliance that is as short as possible. The Regional Board maintains the discretion to determine what amount of time is necessary for each individual discharger based on their particular circumstances. Accordingly, CVCWA recommends that Provision 3 be revised to state as follows: "Compliance with water quality objectives for diazinon and chlorpyrifos shall be as soon as practicable. The Regional Board shall establish time schedules for

compliance with such objectives in Waste Discharge Requirements or waivers in accordance with existing laws and policies.”

3. Provision 8, page C-7: This provision is a restatement of applicable law and is not necessary as part of the proposed Basin Plan amendment. All waste discharge requirements or waivers need to be consistent with and implement Basin Plan requirements. Accordingly, it is not necessary to include a specific provision as part of the amendment here.
4. Municipal Storm Water and Municipal and Domestic Wastewater Monitoring, page C-9: CVCWA is greatly concerned with the monitoring provisions proposed for municipal wastewater agencies. As proposed, this language would mandate ongoing monitoring of diazinon and chlorpyrifos in municipal wastewater effluent even though such pesticides are rarely found in many effluents. Considering the fact that such pesticides are rarely found, such monitoring into perpetuity is not necessary. The monitoring program needs to be revised to allow the discontinuation of monitoring upon a showing by a discharger that such pesticides are not found in the effluent, or are only found at levels below the applicable objectives.
5. Further, CVCWA is concerned that monitoring provision number 3 suggests that municipal wastewater agencies will be responsible for monitoring pesticides that are considered to be alternatives to diazinon and chlorpyrifos. Such monitoring is open-ended, and in fact, many of these alternatives do not have adopted objectives. Moreover, CVCWA believes it inappropriate to use this Basin Plan amendment to control actions with respect to other pesticides. As explained previously, municipal dischargers are unable to control the use of pesticides by consumers. To the extent that alternatives exist that may be of concern, CVCWA encourages the Regional Board to work with the California Department of Pesticide Regulation with respect to the alternatives prior to imposing requirements on municipal dischargers.

III. Revise Cost Estimates for POTW Monitoring

Appendix B – Cost Calculations includes estimates for POTW monitoring. An hourly rate of \$150 per person per day was used to calculate the estimated monitoring cost and \$10,000 per person-month for the monitoring plan and quality assurance plan. The estimate for monitoring personnel is extremely low. CVCWA suggest using at least \$65/hour per person as a cost basis for the monitoring, which is more typical of the cost a municipality would experience. Additionally, the cost basis for the monitoring & quality assurance plans should also be adjusted up, however this cost will vary greatly depending on if in-house expertise is available or if this must be contracted out.

Mr. Daniel McClure

Re: CVCWA Comments on Amendments to the WQCP for Control of Diazinon and Chlorpyrifos

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Thank you for your consideration. Please contact me at (530) 268-1338 or eofficer@cvcwa.org if you wish to discuss our written comments or have any questions.

Sincerely,



Debbie Webster
Executive Officer

cc (via email): Pamela Creedon, Central Valley Regional Water Quality Control Board