



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Mr. Rik Rasmussen
Acting Assistant Deputy Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

Dear Mr. Rasmussen:

The Environmental Protection Agency (EPA) has reviewed the California State Water Resources Control Board (SWRCB) Resolution Number 2011-0036; Amendment to the Water Quality Control Plan for the Sacramento and San Joaquin River Basins (Basin Plan) Establishing Site Specific Objectives for Chloroform, Chlorodibromomethane, and Dichlorobromomethane, for New Alamo, and Ulatis Creeks and Permit Implementation Provisions. EPA is approving the site-specific objectives for chloroform, chlorodibromomethane, and dichlorobromomethane in New Alamo and Ulatis Creeks. However, pursuant to the Clean Water Act § 402 and the regulations at 40 CFR 123.62, EPA hereby disapproves specific proposed revisions to the approved National Pollutant Discharge Elimination System (NPDES) permitting program administered by the Central Valley Regional Water Quality Control Board (RWQCB), included in the revised Chapter IV of the Basin Plan.

The amendment was adopted by the Central Valley RWQCB on May 27, 2010 under Resolution No. R5-2010-0047. The amendment was approved by the SWRCB on August 16, 2011 as Resolution No. 2011-0036. EPA received the State Board's approval request on September 21, 2011. The California Office of Administrative Law (OAL) approved the amendment on November 3, 2011. EPA received OAL's approval letter on December 13, 2011.

The Amendment

The amendment would modify Basin Plan Chapter 3, (Water Quality Objectives) to add site-specific objectives for chloroform, chlorodibromomethane, and dichlorobromomethane in segments of New Alamo and Ulatis Creeks. The amendment would establish a water quality objective for maximum concentration of 45.5 µg/l for chloroform, 4.9 µg/l for chlorodibromomethane, and 15.5 µg/l for dichlorobromomethane in segments of New Alamo and Ulatis Creeks. The amendment would also modify Basin Plan Chapter IV (Implementation), adding provisions for the determination of the need for

water quality-based effluent limitations and the calculation of water quality based effluent limitations in NPDES permits.

Today's Action

A. Approval of Site-Specific Objectives for Chloroform, Chlorodibromomethane, and Dichlorobromomethane

Section 303(c) of the Clean Water Act (CWA) requires EPA to approve or disapprove new or revised state-adopted water quality standards. The State regulatory provisions which are subject to EPA's approval authority under Section 303(c) are those addressing antidegradation, beneficial uses, water quality criteria, and certain provisions addressing implementation of water quality standards for surface waters.

EPA has determined that the portion of the Basin Plan Amendment establishing site-specific water quality objectives in Chapter 3 is subject to EPA's 303(c) approval authority. EPA has reviewed the Basin Plan amendment and has concluded that the site-specific objectives for chloroform, chlorodibromomethane, and dichlorobromomethane are consistent with the requirements of the CWA and EPA's regulations at 40 CFR Parts 131.5 and 131.6.

B. Disapproval of Revisions to *Chapter IV: Implementation of the Basin Plan*

EPA finds that revisions to NPDES Implementation Procedures in Chapter 4 of the Basin Plan may result in the development of NPDES permits that do not comply with State and federal antidegradation requirements and the Clean Water Act. The new reasonable potential analysis procedure, added to Chapter 4 of the Basin Plan under the heading *Determination of Need for Water Quality-Based Effluent Limitations*, provides that reasonable potential would be established only if both the maximum effluent concentration and the maximum in-stream concentration at the terminus of Old Alamo Creek exceed the site-specific objectives for New Alamo Creek. Therefore, effluent limitations would not be required until the applicable water quality objective is already exceeded and the beneficial use at the confluence of Old Alamo Creek and New Alamo Creek is already impaired. Application of this reasonable potential analysis procedure may result in issuance of NPDES permits that do not comply with the State Antidegradation Policy, the federal antidegradation requirements in 40 CFR 131.12, and the Clean Water Act. Accordingly, pursuant to EPA's authority to review NPDES program revisions under 40 CFR 123.62, EPA disapproves this revision to the approved California NPDES program.

As a result of EPA's disapproval of the implementation provisions, the State must issue NPDES permits in accordance with the applicable State and federal program requirements, including but not limited to federal regulations at 40 CFR 122.44 and the State Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries (SIP).

Public Participation

EPA compliments the State on its efforts to include the public in the development and review of new and revised water quality standards and associated implementation provisions. Public involvement is an integral component of a successful water quality program. Based upon our review of the administrative record for the subject amendment, the public review procedures followed by the State in the development of State Board Resolution No. 2011-0036 and the Regional Board Resolution No. R5-2010-0047 are consistent with the procedural requirements for public participation in triennial reviews, adoption, and revision of state water quality standards.

The Endangered Species Act (ESA)

Section 7(a) of the ESA states that each federal agency shall ensure that any action authorized, funded, or carried out by such agency will not likely jeopardize the continued existence of any threatened or endangered (listed) species or result in the destruction or adverse modification of critical habitat. The Basin Plan establishes site-specific human health objectives for chloroform, chlorodibromomethane, and dichlorobromomethane in segments of the New Alamo and Ulatis Creeks. The objectives are meant to protect humans against excessive exposure to the pollutants through the consumption of fish that live in the creeks and drinking water supplies downstream of the creeks. EPA's "Recommended Approaches to Improve Endangered Species Act (ESA) Consultation on Approvals on State and Tribal Water Quality Standards," dated January 16, 2009, states that ESA consultation requirements do not apply to actions where EPA lacks discretion to protect species, or where an EPA action has no effect on listed species or critical habitat. In order for ESA section 7 to apply, EPA must be taking an action in which it has sufficient federal involvement or control to protect listed species. EPA has concluded that it lacks sufficient discretionary federal involvement or control to protect listed species when it approves state water quality standards to protect human health. Human health standards are designed to protect humans, not plants or other animals. EPA has no discretion to revise an otherwise approvable human health standard to benefit listed species. Therefore, ESA consultation requirements do not apply to this action.

If there are any questions regarding our action, please contact Janet Hashimoto at (415) 972-3452 for water quality standards issues or David Smith at (415) 972-3464 for NPDES implementation issues. As always, EPA looks forward to continued cooperation with the State in achieving our mutual environmental goals.

Sincerely,



4/9/13

John Kemmerer
Acting Director, Water Division

cc: Pamela Creedon, Central Valley Regional Water Quality Control Board
Janita Aguirre, U.S. EPA, Office of Water