



CVCWA

Central Valley Clean Water Association

Representing Over Fifty Wastewater Agencies

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Via Electronically Only

Daniel McClure
Senior Engineer
California Regional Water Quality Control Board,
Central Valley Region
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670
dmcclure@waterboards.ca.gov

RE: Central Valley Clean Water Association's Comments on 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

Dear Mr. McClure:

The Central Valley Clean Water Association ("CVCWA") appreciates the opportunity to submit comments on the draft Amendments to the Basin Plan for the Control of Diazinon and Chlorpyrifos ("Draft Amendments") and the Draft Staff Report (March 2013) ("Draft Staff Report") that accompanies and is intended to explain the Draft Amendments. 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 Wasteload Allocations ("WLAs"), the Water Code section 13241 analysis contained within the Draft Staff Report, and the Domestic Wastewater Monitoring Provisions.

I. WLAs

The Draft Amendments propose that WLAs be assigned to “all NPDES-permitted . . . domestic wastewater dischargers to the water bodies listed in Table X or their tributaries.” (Draft Amendment, p. C-6.) Further, for domestic wastewater dischargers (i.e., publicly-owned treatment works (“POTWs”)), a numeric effluent limitation must be included in the NPDES permit if there are one or more valid effluent monitoring data points that exceed the method detection limit (“MDL”) for either diazinon or chlorpyrifos. (Draft Amendment, p. C-7.) CVCWA has concerns with the application of WLAs to the tributaries of listed water bodies, and application of numeric effluent limitations even if no reasonable potential exists.

First, the application of numeric effluent limitations as proposed here is inconsistent with federal regulations. According to the Draft Staff Report, the justification for this requirement appears to be a U.S. Environmental Protection Agency (“USEPA”) determination that current WLAs in the Basin Plan require non-storm water NPDES permits to contain numeric diazinon and chlorpyrifos effluent limits. (Draft Staff Report, p. 137.) While that may be an appropriate interpretation of existing Basin Plan language, it is not necessarily applicable to the Draft Amendment, which proposes to change existing (and can further change) Basin Plan language. With respect to application of WLAs, the federal regulations state that when developing water quality based effluent limits, 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 water quality based effluent limitations 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 water quality based effluent limitations 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 water quality based effluent limitations are required for all pollutants for which a WLA exists. Thus, to be consistent with federal regulatory requirements, the Draft Amendment should be revised to clearly state that WLAs are required when the discharge from a POTW has reasonable potential to cause or contribute to a violation of the applicable water quality standard – not when there are detections above the MDL.

Furthermore, use of the MDL as the point to determine if valid effluent monitoring data exists is inconsistent with typical monitoring provisions in NPDES permits. Under the terms of NPDES permits, permittees are required to identify Minimum Levels (“ML”) as their reporting levels. The MLs used may or may not be the same as the MDL. In some cases, MDLs are below the MLs, which are then reported as detected but not quantified. If the Regional Board does not revise the Draft Amendment as commented above (i.e., limit application of WLAs to when reasonable potential exists), the Draft

Amendment needs to be revised to refer to exceedances above the ML – not the MDL – to be consistent with NPDES permitting procedures.

Second, the Draft Amendment states that the WLAs apply to water bodies listed in Table X or their tributaries. (Draft Amendment, p. C-6.) As we understand it, Table X is intended to be the list of water bodies that have been specifically listed as being impaired for diazinon and/or chlorpyrifos. The Draft Amendment improperly includes unlisted water bodies by extending application of WLAs to tributaries of water bodies identified in Table X. Although it has been recognized that water bodies may be added to a TMDL as being impaired, determination of impairments must still be made pursuant to application of the state's Listing Policy. In other words, if the Regional Board determines it appropriate to add water bodies to a TMDL that are not currently listed as impaired, the Regional Board must first identify how the water body is impaired under the state's Listing Policy. This has not occurred. Rather, the Draft Amendment proposes to arbitrarily extend application of WLAs to all tributaries without evaluating data or information to properly determine if the "tributaries" are in fact impaired for diazinon and/or chlorpyrifos. Considering the improper expansion of application of WLAs, the inclusion of "or their tributaries" must be deleted from the Draft Amendment.

II. Water Code Section 13241

The Draft Amendments include adoption of water quality objectives for diazinon and/or chlorpyrifos. Accordingly, adoption of such objectives is required to comply with relevant provisions of the Water Code, and specifically section 13241. Water Code section 13241 requires the Regional Board to consider a number of statutorily specified factors prior to adopting water quality objectives that will "reasonably" protect beneficial uses. Although the Draft Staff Report includes mention of the factors, the analysis associated with each is limited at best. For example, with respect to economic considerations, the Draft Staff Report briefly discusses the lack of costs beyond monitoring for municipal dischargers that would be associated with the Draft Staff Report's recommended objectives. It also notes that if the no detectable level option was selected, that significant costs could occur. However, neither is an actual analysis with respect to economic impacts adoption of the criteria may have on municipal dischargers. Considering the precedential nature of this Draft Amendment (we understand that it will be a template for future pesticide water quality objectives), the Water Code section 13241 analyses provided here needs to be more robust to accompany the adoption of water quality objectives.

III. Monitoring Provisions

The Draft Amendments would require domestic wastewater dischargers to include in their NPDES monitoring programs the requirement to collect information necessary to "determine whether alternatives to diazinon or chlorpyrifos are causing surface water quality impacts." Such a requirement is inappropriate as applied to domestic wastewater

dischargers. It is not the role of POTWs to collect such information and make such determinations. This is a function for the Department of Pesticide Regulation when pesticides are registered – not POTWs. Accordingly, this monitoring provision must be deleted from the Draft Amendments.

In conclusion, CVCWA recommends that the Draft Amendments be revised to require application of WLAs only to domestic wastewater dischargers when reasonable potential exists. Otherwise the Draft Amendments are overly expansive and are unnecessary as applied to dischargers that do not have reasonable potential to cause or contribute to an exceedance of the standards. Additionally, WLAs should apply only to water bodies listed as being impaired for diazinon and/or chlorpyrifos. Further, the Water Code section 13241 analyses needs to be revised to be more robust, and the monitoring provisions need to be scaled back to exclude determinations of impacts from alternatives to these pesticides.

CVCWA appreciates the opportunity to comment. Please contact me at (530) 268-1338 eofficer@cvcwa.org if you have questions with respect to these comments.

Sincerely,



Debbie Webster,
Executive Officer