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County of Sacramento

December 3, 2014

Mr. Tessa Fojut
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670
Sent via email: tessa.fojut@waterboards.ca.gov

Subject: October 2014 Preliminary Draft for Discussion, Pyrethroid Basin Plan Amendment Language

Dear Ms. Fojut:

Thank you for providing stakeholders with the opportunity to comment on the development of the subject preliminary draft Basin Plan Amendment (BPA). The County of Sacramento, Department of Water Resources is a member of the Sacramento Stormwater Quality Partnership, and since 1991 has been a co-permittee on the Sacramento municipal stormwater NPDES Permit.

The County supports the Water Board's efforts to share information and foster open dialogue in the development of this Basin Plan Amendment. The stakeholder process has been useful and informative, and the County appreciates the time and effort that has gone into the public engagement process throughout the development of the BPA.

The County also appreciates and supports the Central Valley Water Board's stated intent to continue to coordinate with the CA Department of Pesticide Regulation (DPR), the United States Environmental Protection Agency (USEPA) and the County Agricultural Commissioners on appropriate pesticide registration and use requirements for the protection of water quality.

We have made a number of suggested edits and provided comments on the preliminary draft Basin Plan Amendment language (see attached), and we wish to provide additional input via this letter regarding the proposed draft "total maximum daily load" (TMDL) requirements (see below).

TMDL is unnecessary

The primary issue raised by the draft Basin Plan Amendment, from the standpoint of the County's stormwater program, involves the proposed TMDL and associated wasteload

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allocations for municipal stormwater agencies (MS4s). The proposed water quality objectives provide explicit protection for receiving water quality, and MS4s are required to implement management measures to address the controllable sources of pesticide discharges within their jurisdictions.

Because the MS4s are required by both the Basin Plan Amendment and their MS4 NPDES permits to implement specific best management practices (BMPs) to control pesticide discharges to the maximum extent practicable (MEP), and because control of urban pesticide uses (beyond the MS4 agencies' own facilities) is beyond the regulatory authority of the MS4s, a TMDL with its associated wasteload allocations for MS4 discharges is not the appropriate or necessary regulatory mechanism to apply in this situation. See relevant comments and suggested edits especially on pp. 8-10 of the Draft BPA Language (attached).

If an MS4 is implementing the required BMPs to the MEP (per both the BPA and NPDES permit requirements), then it can do no more to control discharges of legally applied pesticides within its jurisdiction, from a practicable standpoint. The draft TMDL simply requires implementation of the same set of BMPs, but then puts the MS4 at risk for potential exceedances of the wasteload allocations.

Because the proposed draft TMDL wasteload allocations would effectively implement the receiving water quality objectives as end-of-pipe effluent limits for impaired receiving waters, MS4 agencies are vulnerable to potential additional regulatory action and/or third-party lawsuits under the Clean Water Act citizen suit provisions, in the event that the wasteload allocations are exceeded. This could potentially occur even with language limiting the responsibilities of MS4s to BMP implementation as proposed in the draft BPA. See several related comments and suggested edits in the mark-up of the draft BPA language (attached).

The underlying issue is that local agencies in California do not have regulatory authority over the uses of pesticides that may be present in urban runoff. This severely limits the capability of municipal stormwater agencies to control discharges of pesticides to receiving waters, and to address potential exceedances of pesticide wasteload allocations. Local agencies must rely on the application of authorities of DPR and USEPA to effectively control pesticide uses so as to prevent water quality impacts in urban areas.

TMDL Exemption Is Reasonable and Appropriate

In discussions with Water Board staff, we have made the case that an exemption under EPA's Category 4b is appropriate and supportable per EPA's guidelines. We have attached a detailed rationale to support the exemption.

In recent years, collaborative working of CASQA and Water Board staff with the California Department of Pesticide Regulation (DPR) resulted in significant changes in pesticide regulation when DPR adopted surface water quality protection regulations in 2012, specifically to address receiving water impacts from registered uses of pyrethroid pesticides in

California's urban watersheds (DPR, 2012¹). DPR's adoption of these regulations depended its conclusion, based on scientific analysis, that the regulations were necessary to mitigate pyrethroid discharge to urban water bodies.

Additionally, the 1997 Management Agency Agreement (MAA) between the State Water Resources Control Board and DPR provides a process for protection of water quality, and DPR has further committed to continued collaboration with the Water Boards and CASQA to solve pesticide water pollution problems in urban areas. Based on this commitment, and DPR's recognition that state law prevents municipal regulation of pesticide use, we expect that DPR will continue to take the lead for addressing future urban pesticide water pollution, as it has already been doing for pyrethroids.

Other Issues of Importance to MS4s

As reflected in the suggested edits and comments on the draft BPA language (attached), the County of Sacramento requests that the Basin Plan Amendment and the associated staff report incorporate the following elements:

1. Additional language acknowledging that full implementation of the regulatory authorities of pesticide regulatory agencies (DPR and USEPA) should be the primary mechanism for addressing pesticide-caused water quality impairments for urban water bodies.
2. Acknowledgement that DPR and Water Board monitoring programs should be the primary mechanism for assessing pesticide impacts in urban receiving waters and evaluating the effectiveness of DPR's surface water protection efforts.

In conclusion, the County advocates that the Water Board revise the draft Basin Plan Amendment without creating a TMDL regulation, as the TMDL is duplicative, unnecessary, and potential harmful, and we believe that the identified beneficial use impairments can be addressed through other means and measures.

¹ DPR. 2012. Pesticide Contamination Prevention Regulations. California Department of Pesticide Regulations (DPR). Sacramento, CA. July 2012

http://www.cdpr.ca.gov/docs/legbills/rulepkgs/11-004/text_final.pdf

Thank you for considering these comments. We look forward to continuing to work with your staff to more effectively prevent future urban pesticides water pollution. If you have any questions or items to discuss, please contact Dave Tamayo, Environmental Specialist, at 916 874-8024 or tamayod@saccounty.net.

Sincerely,

Dana Booth, Environmental Program Manager II
Sacramento County Stormwater Quality Program

Attachments:

County of Sacramento Mark-up version
October 2014 Preliminary Draft for Discussion,
Pyrethroid Basin Plan Amendment Language
Pyrethroid TMDL Exemption Support Document, County of Sacramento

cc: Geoff Brosseau, Executive Director, California Stormwater Quality Association
Daniel McClure, Central Valley Regional Water Quality Control Board
Dave Tamayo, County of Sacramento
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