EcoKai Environmental, Inc.

December 6, 2017
VIA EMAIL

California Regional Water Quality Control Board
Los Angeles Region
Attn: Dr. Celine Gallon
320 West 4th Street Suite 200
Los Angeles, CA 90013

Subject: 2017-2019 Triennial Review of Water Quality Standards – Los Angeles Region
Non-Uniform Application of Selenium Criterion in NPDES General Permit CAG99004 and Order No. R4-2013-0095

Dr. Gallon:

EcoKai Environmental is respectfully requesting that the 2017-19 Regional Water Quality Board's Triennial Review Team look at developing uniform guidelines and uniform policy in the application of water quality standards for naturally occurring selenium in the Hollywood and Central Groundwater basins. Although these uniforms standards will not be developed in time to apply to the remaining duration of existing Order No. R4-2013-0095, it will be extremely beneficial for all future Order No's adopted by the Los Angeles Water Board under NPDES General Permit CAG99004 - Waste Discharge Requirements for Groundwater Discharges from Construction and Project Dewatering to Surfaces Waters in Coastal Watersheds Laos Angeles and Ventura Counties.

Background

For almost two years EcoKai has continued to reach out to Water Board personnel in an attempt to understand why the application of non-uniform water quality criteria continues to be enforced by Water Board staff for both selenium monitoring frequency and the maximum allowable concentrations in the Waste Discharge Requirements of several dischargers in the Hollywood and Central Groundwater sub-basins. What continues to be insufficiently explained is the fact that selenium limits have continued to be enforced even though the Los Angeles Water Board adopted Resolution 13-010 on December 5th, 2013 that removed the selenium TMDL for Ballona Creek. Specifically,

> *"Recent data indicate that selenium is not present at levels exceeding existing numeric targets and is not impairing the designated beneficial uses. Therefore, a TMDL for selenium is not included"*

The resolution went through the normal approval process for a modification to Waste Discharge Requirements (i.e., Regional Water Board, State Water Board, OAL, and US EPA) with final approval October 26, 2015. As a result, many NPDES Permitted Discharges under Order No. R4-2013-0095 received a letter from the Water Board dated January 29, 2016 removing the Ballona Creek TMDL for Selenium and removed **all** daily and monthly maximum concentration constraints.

However, many other NPDES Permitted discharges in the same area received a slightly different letter from the Water Board dated February 5th, 2016. Although this second letter also removed the Ballona Creek TMDL for selenium, it further modified Waste Discharge Requirements (based on a self described staff evaluation of reasonable potential) by adding a new daily and monthly maximum allowable concentration for selenium and increased the frequency of selenium monitoring. The issuance of these two different letters has led to different selenium limits and frequencies of monitoring for dischargers under Order No. R4-2013-0095 for similar dischargers that have rising groundwater into subterranean parking garages who are in the same immediate area.

Legal Authority Granted by California Water Code

We believe that the additional changes to the Waste Discharge Requirements modified by the February 5th, 2016 letter (beyond those approved by the adoption of Resolution 13-010 as approved the US EPA on October 25th, 2015) are outside the authority granted to Water Board staff under California Water Code Section 13223.

FROM: Samuel Unger
Executive Officer

DATE: July 9, 2014 (updated January 6, 2015)

SUBJECT: DELEGATION OF AUTHORITY; SIGNATURE REQUIREMENTS

"Delegation" is addressed in Water Code section 13223, which states:

"(a) Each regional board may delegate any of its powers and duties vested in it by this division to its executive officer excepting only the following:

(1) the promulgation of any regulation;

(2) the issuance, modification, or revocation of any water quality control plan, water quality objectives, or waste discharge requirement;

Furthermore, we believe that the increase in selenium sampling frequency requested in the February 5, 2016 letter is in direct conflict with Section XI of the Waste Discharge Requirement Monitoring and Reporting Programs for discharges because Section XI does not allow an increase in sampling frequency by staff – see below:

XI. MONITORING FREQUENCIES ADJUSTMENT

Monitoring frequencies may be adjusted by the Executive Officer to a less frequent basis if the Discharger makes a request and the request is backed by statistical trends of monitoring data submitted.

Although most discharges have tried to comply with the additional Water Board staff criterion that modified their Waste Discharge Requirements required by the February 5th 2016 letter, the presence of naturally occurring selenium in the regional groundwater basin continues to rise and has put many in a

position of multiple unresolved enforcement actions that, if not corrected, will result in tens of thousands of dollars in mandatory minimum fines per discharger.

Our hope is that the 2017-19 Triennial Review Team will take a detailed look at the inconsistent application and administration of NPDES General Permit (CAG99004) and Order No. R4-2013-0095 and correct staff overreach such that a uniform standard is applied to all discharges. It is also expected that any fines not lawfully issued would be corrected and / or refunded pursuant to applicable law.

If you have any questions about our comments, or if I can be of any additional assistance, please call me in our office at (424) 241-3524.

Sincerely,

Jim Burton, PE
President/CEO
EcoKai Environmental, Inc.
www.ecokai.com

cc: Mr. Samuel Unger – Executive Officer
Ms. Renee Purdy – Regional Programs
Dr. Ginachi Amah – Senior WRC Engineer
Mr. Hugh Marley – Compliance & Enforcement
Mr. Augustine Anijielo – General Permitting

bcc: