

WATER COMMITTEE ISSUE SUMMARY

POLICY FOR IMPLEMENTATION OF TOXICS STANDARDS FOR INLAND SURFACE WATERS, ENCLOSED BAYS AND ESTUARIES CALIFORNIA TOXICS RULE (CTR) AND STATE IMPLEMENTATION POLICY (SIP)

Background

The SWRCB was required to adopt water quality objectives for priority pollutants under the Clean Water Act, Section 303(c)(2)(B). SWRCB originally adopted the Inland Surface Water Plan/Enclosed Bays and Estuary Plan (ISWP/EBEP) in 1991, but both plans were rescinded in 1994 in response to a court order overturning the plans for failure to comply with Water Code requirements. As a result, USEPA began efforts to promulgate the California Toxics Rule (CTR), which was finalized on May 18, 2000 and was not subject to California's legal requirements.

In conjunction with the CTR, the SWRCB developed the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (State Implementation Policy, or SIP) and functional equivalent document (FED), which contains provisions for determining reasonable potential, calculating effluent limits, compliance determination, compliance schedules, and other related topics. The SIP became effective upon USEPA promulgation of the CTR in May 2000. National Pollutant Discharge Elimination System (NPDES) permits now must be written to incorporate the provisions of the SIP and CTR.

In 2001, EPA issued a letter conditionally approving the SIP. EPA approved most provisions of the SIP, subject to various conditions on the proper interpretation, but withheld action on the compliance schedules provision which allows up to 15 years for a TMDL to be developed and 5 years for compliance with the wasteload allocations derived from the TMDL (for a total of up to 20 years). In light of EPA's inaction, the status of these TMDL-based compliance schedule provisions is unclear, although the SWRCB recently indicated that this provision is not in effect due to EPA's failure to approve it. However, it is also not clear that EPA approval of state implementation provisions is required under the Clean Water Act.

In February 2005 the SWRCB adopted amendments to the SIP that:

- Allowed water effects ratios (WERs) to be established in individual NPDES permits, rather than in the Basin Planning process as currently required.
- Eliminated the reasonable potential trigger for situations where ambient background pollutant concentrations are greater than a priority pollutant objective or criterion.
- Directed staff to introduce an amendment to the SIP to address narrative toxicity control provisions by January 2006.

Current Status:

Toxicity Control Provisions: SWRCB released for public review and comment a scoping document for revision of the toxicity control provisions of the SIP. A workshop was held January 17, 2006. The current toxicity control provisions establish minimum chronic toxicity control requirements for implementing the narrative toxicity objectives for aquatic life protection in the various Basin Plans. According to the scoping document, there are “significant implementation gaps” in the SIP with regard to development of permit requirements for toxicity. For example, the SIP does not specify the appropriate form and implementation of toxicity limits. The SWRCB directed staff in 2005 to develop more detailed toxicity control provisions. The current proposal includes numeric limits for chronic toxicity. The SWRCB staff is planning to conduct a survey of POTWs later this fall to gather additional information for the decision making process.

Compliance Schedule Provisions: On August 23, 2006, a coalition of environmental groups filed suit under the Administrative Procedures Act, alleging that five year compliance schedules authorized under the State Implementation Policy are unlawful. The second lawsuit, filed on September 13, 2006, alleges that U.S. EPA unlawfully failed to either approve or disapprove certain compliance schedule provisions in the SIP. Both cases have been filed in the federal District Court for the Northern District of California. On September 15, 2006, the SWRCB Office of Chief Counsel released a memorandum expressing the opinion that the expiration of the CTR compliance schedule provisions on May 18, 2005 did not resurrect the longer, fifteen-year compliance schedule provisions in the SIP under the “Alaska Rule”

Key Concerns:

CASA and Tri-TAC submitted comments supporting the use of narrative effluent limitations with numeric monitoring triggers, rather than numeric toxicity effluent limits. CASA has consistently argued against the application of numeric effluent limitations for toxicity in POTW permits. Unlike chemical test methods, whole effluent toxicity (WET) test methods lack sufficient reliability and reproducibility to support placing a discharger in violation for a single test failure. One USEPA interlaboratory study, for example, revealed a false positive rate of 20 percent for chronic toxicity tests. In addition, as recognized in the SWRCB scoping document, “POTWs face the unique challenge of treating a highly variable and partially unrestricted influent.” A current schedule for adoption is unknown at this time.

Another concern is the sunset provision for compliance schedules in May of 2010. CASA and Tri-TAC sent a letter to the State Board regarding this issue and received a response letter from Celeste Cantú stating that the SIP would not be amended on this issue.

A final concern is that there has not been the requisite triennial review of the CTR. The State was supposed to take those numbers and adopt them into Basin Plan, and

hopefully adjust them to local conditions. However, neither a three-year review nor amendment into Basin Plans has occurred in the nearly 6 years since the CTR was adopted.

More information:

➤ See CASA/Tri-TAC Comment letters:

http://www.tritac.org/documents/letters/2006_01_17_Toxicity%20Control%20in%20SIP.pdf

http://www.tritac.org/documents/letters/2004_11_08_CASA%20Final%20Ltr%20SIP.pdf

➤ See SWRCB Website:

<http://www.waterboards.ca.gov/iswp/index.html>

Contacts: Monica Oakley, Oakley Water Strategies; Tom Grovhoug, LWA; Bobbi Larson, CASA

Current as of October 2006

WATER COMMITTEE ISSUE SUMMARIES

PROPOSED OCEAN PLAN AMENDMENTS

Regulatory Background: The California Ocean Plan establishes water quality objectives for California's ocean waters and provides the basis for regulation of wastes discharged into the State's coastal waters. It applies to point and nonpoint source discharges. The SWRCB adopts the California Ocean Plan, and both the SWRCB and the six coastal Regional Water Quality Control Boards (RWQCBs) implement the California Ocean Plan. Currently, the 2005 California Ocean Plan contains three chapters that describe beneficial uses to be protected, water quality objectives, and a program of implementation needed for achieving water quality objectives.

Project Description: The California Water Code (§13170.2) requires that the California Ocean Plan be reviewed at least every three years to guarantee that the current standards are adequate and are not allowing degradation to indigenous marine species or posing a threat to human health. This project, if approved by the SWRCB, will amend the 2005 California Ocean Plan.

Issue 1: Proposed changes to Standard Monitoring Procedures

Summary of Proposed Amendment: The amendments include test methods for bacteria indicators; effluent monitoring for bacteria; standard methods for Table B objectives; effluent monitoring for stormwater discharges; sediment, toxicity, benthic and mussel monitoring; and model monitoring programs.

Issue 2: Proposed Changes to Areas of Special Biological Significance (ASBS) Provisions

Summary of Proposed Amendment: The amendment would change the implementation of ASBS. As currently interpreted by the SWRCB, this section of the Ocean Plan prohibits discharges to ASBS of stormwater or nonpoint source pollution. This proposal for allow for some stormwater discharges to ASBS under the following conditions: No nonpoint source discharges, maintenance of natural water quality, and monitoring requirements for all discharges.

Update: The comment period for these proposed amendments to the California Ocean Plan has closed. More information can be found at <http://www.waterboards.ca.gov/plnspols/asbs.html> and <http://www.waterboards.ca.gov/plnspols/oplans.html>

The 2005 California Ocean Plan was approved on February 14, 2006 by the United States Environmental Protection Agency, and is now available at: <http://www.waterboards.ca.gov/plnspols/docs/oplans/oceanplan2005.pdf>. These 2005 Ocean Plan amendments were previously adopted by the State Water Resources

Control Board on January 20, 2005 and April 21, 2005, and by the California Office of Administrative Law on October 12, 2005.

The California Ocean Plan Triennial Review and Workplan 2005-2008 is available at: <http://www.waterboards.ca.gov/plnspols/docs/oplans/coptrirev20052008.pdf> y.

Contacts: Jim Colston, Orange Co. Sanitation District; Jim Marchese, City of LA - Bureau of Sanitation.

Current as of: October 10, 2006

WATER COMMITTEE ISSUE SUMMARY

TOTAL RESIDUAL CHLORINE (TRC) POLICY

Background

The State Water Resources Control Board (SWRCB) has proposed a policy to implement the US EPA criterion for chlorine residual of 0.019 mg/L for a 1-hour average through the development of a Statewide Total Residual Chlorine (TRC) Policy. The proposed TRC Policy establishes numeric water quality objectives for chlorine and specifies an implementation program for permitting and compliance with the objective. The proposed effluent limits are:

Proposed Effluent Limit	1 hour average (mg/L)	4-day average (mg/L)
Total Residual Chlorine – Freshwater (freshwater)	0.019	0.011
Chlorine Produced Oxidants – Saltwater (saltwater)	0.013	0.0075

The Policy also requires continuous monitoring for chlorine or dechlorinating processes with a frequency of one or more data points every minute. In addition, it requires that equipment have a sensitivity of 1 µg/L (0.001 mg/L) and that it be calibrated to 0.500 mg/L using a specified lab method. Other aspects of the policy include:

- ✓ A five-year compliance schedule
- ✓ The allowance of mixing zones (if allowed in basin plan)
- ✓ Treating non-detects as “zero” for compliance determinations; and
- ✓ The use of stoichiometric calculations to demonstrate compliance when analyzers are offline or to verify false positive.

Current Status

The policy has been in the development for over two years. The State Water Board held a scoping meeting on July 7, 2005, followed by two stakeholder workshops in the fall. In response to an invitation from SWRCB staff to “test drive” the proposed TRC Policy, Tri-TAC submitted additional comments on January 4, 2006. Two drafts of the policy were released for comment. Tri-TAC and its fellow wastewater organizations submitted written comments on both versions. Currently the State Water Board is conducting a survey of POTWs in an effort to evaluate comments that compliance with the continuous monitoring requirements is infeasible. Tri-TAC and other wastewater

organizations assisted in distributing the questionnaire. Responses are due October 18, 2006. A final proposed policy is expected to be scheduled for adoption in late 2006.

Key Concerns:

There are three key issues of concern to POTWs related to this initiative:

- 1) The need for a statewide policy, given the difference in receiving waters throughout the state;
- 2) The automatic insertion of chlorine limits and the ability to comply with the proposed effluent limits; and
- 3) The ability of continuous field instrumentation to reliably analyze at the low levels proposed. The sensitivity and monitoring frequency requirements in the policy do not reflect the actual limitations of the instruments currently available on the market or the realities of layers of variables in a continuous on-line field environment. Tri-TAC has stressed that no current on-line analytical technology is capable of reliably measuring chlorine at 1 µg/L under field conditions.

Drinking water supply agencies have also expressed concern for discharges from water line breaks where chlorine is added to their systems for public health reasons. The residual amounts may exceed the proposed objectives and limits.

More Information

➤ See CASA/Tri-TAC Comment Letters:

http://www.tritac.org/documents/letters/2006_07_14_TRC%20Draft2.pdf

http://www.tritac.org/documents/letters/2006_06_05_Joint_Comments_on_Total_Residual_Chlorine_Policy.pdf

http://www.tritac.org/documents/letters/2006_01_04_TriTAC_Comments_Chlorine_Residual_Policy.pdf

http://www.tritac.org/documents/letters/2005_10_21_TriTAC_Comments_Cl_Residual.pdf

http://www.tritac.org/documents/letters/2005_07_07_Joint_Comments_on_Total_Residual_Chlorine_Policy.pdf

➤ See SWRCB Website:

<http://www.waterboards.ca.gov/iswp/chlorine.html>

http://www.tritac.org/documents/letters/2005_11_03_State_Board_Reponse_Letter_Cl2.pdf

Contact: Ben Horenstein, EBMUD.

Current as of October 2006

WATER COMMITTEE ISSUE SUMMARIES

SEDIMENT QUALITY OBJECTIVES

Regulatory Background: In 1989, the California Water Code (CWC) was amended to require the SWRCB to develop Sediment Quality Objectives (SQOs) as part of a comprehensive program to protect existing and future beneficial water uses within California's enclosed bays and estuaries. The SWRCB is now developing SQOs in enclosed bays of California in accordance with the requirements of Section 13393 of the (CWC). As a result of a lawsuit filed in 1999 by several non-governmental organizations, the Court ordered the SWRCB to develop SQOs in accordance with the following schedule:

- By August 5, 2005, SWRCB was to circulate draft proposed objectives to the public
- By February 28, 2007, the SWRCB was to adopt proposed SQOs and an accompanying implementation policy and submit these to the Office of Administrative Law (OAL)

The SWRCB has been unable to meet this schedule and is in the process of negotiating a revised schedule with the petitioners in the court case. The SWRCB is now operating on the following time line - reflective of a one year slip in the schedule:

- Circulate draft CEQA Scoping Document on August 17, 2006
- Schedule CEQA Scoping meeting for late October 2006
- Accept written comments on Scoping Document for two weeks after Scoping meeting
- Prepare Functional Equivalent Document for proposed SQOs (date not established)
- Adopt proposed SQOs and implementation policy in a stand-alone water quality control plan and send to OAL in February 2008

To develop the SQOs, the SWRCB is utilizing three forums including a Sediment Quality Advisory Committee (SQAC) comprised of designated representatives from the regulated community and non-governmental organizations, a Scientific Steering Committee (SSC) comprised of national sediment quality experts that acts as a peer review/advisory committee to the SWRCB and its Science Team, and an Agency Coordination Committee (ACC) comprised of SWRCB, Regional Water Board and other state and federal agency representatives.

Project Goals: Develop scientifically defensible SQOs based on multiple lines of scientific evidence that are protective of beneficial uses. Develop implementation policy and guidance that provides for consistent application throughout the state. Develop

methods and tools for assessing and managing sediment quality in enclosed bays that are applicable to estuaries in the future after further data collection in those areas.

Key Project Objectives: Utilize narrative SQOs to provide reasonable protection of sensitive beneficial uses affected by sediment quality, including those linked to aquatic life and fish consumption.

Project Roles: SWRCB staff and contractors (Science Team) are managing the project. The SWRCB Science Team includes: Southern California Coastal Waters Research Project (SCCWRP), San Francisco Estuary Institute (SFEI), Moss Landing Marine Labs and UC Davis-MPSL Granite Canyon. The Scientific Steering Committee, Advisory Committee, and the ACC members are reviewing and advising on the work. SWRCB will ultimately approve the SQOs and accompanying policy and FED, which will be forwarded to OAL and USEPA for approval.

Sediment Quality Advisory Committee:

Regulated Community:

- Ports: Paul Johansen, Port of Los Angeles. Alt: Andy Jahn, Port of Oakland
- POTWs: Tom Grovhoug, Larry Walker Associates. Alt: Lisa Haney, LACSD
- Municipal Stormwater: Desi Alvarez, City of Downey. Alt: Sandy Mathews, California Stormwater Quality Association
- Industrial Stormwater: Tim Piasky, BIASC. Alt: Steve Arita, Western States Petroleum Association
- Industrial Direct: Susan Paulsen, Flow science. Alt: Craig Johns, California Resource Strategies
- Federal Facilities: Bart Chadwick, Navy
- Legacy Pollutants: Paul Singarella, Latham & Watkins.

Environmental Community (as of September 2006, participation of these individuals in the Advisory Committee has ceased)

- Gabrielle Sumner and Laura Hunter, Environmental Health Coalition
- Mitzi Taggart, Heal the Bay. Sarah Newkirk and Linda Sheehan Alt. Representing the Ocean Conservancy;
- Bruce Reznik, San Diego BayKeeper
- Leo P. O'Brien, San Francisco BayKeeper
- Robin Rierdan, San Diego River Park- Lakeside Santee Conservancy
- Bill Jennings, Delta Keeper
- Ed Kimura, Sierra Club, San Diego Chapter
- Marco Gonzalez Surfrider Foundation, San Diego Chapter
- Dave Paradies, Bay Foundation of Morro Bay.

Scientific Advisory Committee:

- Dr. Todd Bridges, U.S. Army Corps of Engineers
- Dr. Bob Van Dolah, South Carolina Department of Natural Resources
- Dr. Peter Landrum, NOAA, Great Lakes Environmental Research Lab

- Edward Long, ERL Environmental
- Dr. Rob Burgess, USEPA.

Agency Coordination Committee:

SWRCB, RWQCB, Department of Fish and Game, Department of Pesticide Regulation, Department of Toxics Substances Control, State Lands Commission, San Francisco Bay Conservation and Development Commission, California Coastal Commission and OEHHA.

Issues: The SWRCB has established a data-driven, science-based work plan to formulate sediment quality objectives (either narrative or numeric). SWRCB has stated that it will follow the requirements of the California Water Code in setting enforceable objectives. SWRCB staff will capture important policy and implementation issues in a Policy Support Document (PSD). The Phase 1 effort is limited to the development of SQOs in marine and estuarine areas of enclosed bays in California. The primary focus for SQO development will be the protection of sensitive benthic communities using benthic invertebrate community measures, acute and sublethal sediment toxicity tests, and sediment chemistry analysis. Tools for assessment of human health and wildlife protection will be examined but these end points are not expected to be the subject of SQOs in Phase 1.

Update: Several meetings/conference calls of the Sediment Quality Advisory Committee (SQAC) were held in summer, 2006 to discuss the contents of the proposed CEQA scoping document for proposed SQOs. The next meeting of the SQAC is tentatively scheduled to occur in September, 2006.

The most recent meetings/conference calls of the Scientific Steering Committee occurred in summer 2006. The SSC was asked to review suggested changes to the proposed direct effects Multiple Lines of Evidence (MLOE) approach for individual site assessment.

On April 13, 2006, the SWRCB convened a meeting of interested parties to solicit participation in an Advisory Committee to be involved in the development of SQOs in estuaries (in particular the Sacramento-San Joaquin Delta). The SWRCB intends to issue a draft Functional Equivalent Document and proposed SQOs for the Delta in December 2010.

Schedule:

- January 2003: Project start, Work plan development, Database creation
- June 2003: Adopt work plan
- August 3-4, 2004: First meeting of Scientific Steering Committee
- February 28-March 2, 2006: Most recent meeting of the Scientific Steering Committee

- August 17 2006: Draft CEQA Scoping document for SQOs for direct effects in enclosed bays.
- CEQA scoping meeting in late October 2006; public comments due in November, 2006
- February 2008: Adopt SQOs for direct effects in enclosed bays
- December 2010: Draft SQOs and FED for direct effects in estuaries and tools and approach for indirect effects

Contacts: Tom Grovhoug, LWA; Lisa Haney, LA Co. Sanitation District; Jim Marchese, City of LA - Bureau of Sanitation

Current as of: September 5, 2006