



California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair



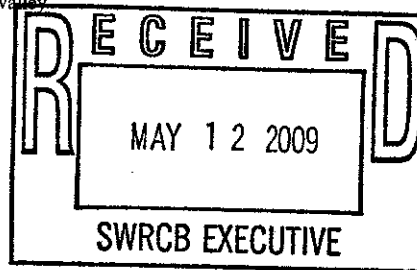
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Arnold
Schwarzenegger
Governor

12 May 2009

Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor 95814
Sacramento, CA 95812-0100



COMMENTS FOR PETITION OF WASTE DISCHARGE REQUIREMENTS ORDER NO. R5-2007-0036 FOR THE CITY OF TRACY WASTEWATER TREATMENT PLANT, SWRCB/OCC FILE NO. A-1846(a) and A-1846(b) – 19 MAY 2009 STATE WATER RESOURCES CONTROL BOARD MEETING

Thank you for the opportunity to comment on the 7 May 2009 draft State Board Water Quality Order (draft Order) referenced above.

The Central Valley Regional Water Quality Control Board (Regional Water Board) agrees with many changes in the proposed draft Order. While the Regional Water Board appreciates the proposed change to delete the requirement to mandate the Regional Water Board include an effluent limit for bis(2-ethylhexyl)phthalate in the Tracy Permit, the Regional Water Board has significant concern regarding the proposed changes to the discussion of bis(2-ethylhexyl)phthalate on page 17 through page 19 of the draft Order. The Regional Water Board does not believe the draft Order adequately addresses the concerns raised by the Regional Water Board in its written comments to the 2 February 2009 draft Order and in its verbal comments provided to the State Water Board at its 21 April 2009 workshop on the draft Order. This is a serious issue for the Regional Water Board given this is a precedential Order that will affect future decisions by the Regional Water Boards throughout the State. We believe the proposed language changes to the draft Order are too narrow in its discussion and will negatively impact a Regional Water Board's future ability to implement its discretionary authority provided in the SIP when determining the appropriateness and sufficiency of data it considers when developing and issuing NPDES permits.

We recommend the State Water Board delete the current argument in its entirety and replace it with the following language:

Based on the record, we agree the Central Valley Water Board properly executed its discretionary authority to determine that certain samples contained in the record for bis(2-ethylhexyl)phthalate are inappropriate for use in determining reasonable potential for this constituent. In this case, the Central Valley Water Board used its discretion based on the Regional Water Board's concern with erroneous sampling results for bis(2-ethylhexyl)phthalate that may have resulted from potential contamination from plastics used in sampling and laboratory equipment, and on sampling results from a split sample that clearly demonstrate questionable or inconsistent monitoring results for bis(2-ethylhexyl)phthalate. The State Water Board recognizes that Section 1.2 of the SIP provides the Regional Water Quality Control Boards discretion to consider if any data are inappropriate or insufficient for

California Environmental Protection Agency

use in implementing the SIP. The SIP provides examples of when data are inappropriate or insufficient including, but not limited to, when there are questionable quality control/quality assurance practices. The State Water Board finds that this justification is applicable and appropriate for the bis(2-ethylhexyl)phthalate data considered by the Central Valley Water Board. Therefore, we affirm the Central Valley Water Board's determination that no water quality-based effluent limitation is required for bis(2-ethylhexyl)phthalate because the data considered applicable and appropriate by the Regional Water Board did not demonstrate reasonable potential.

If you have any questions, please contact Kenneth Landau at (916) 464-4726 or klandau@waterboards.ca.gov.

**ORIGINAL SIGNED BY
KENNETH D. LANDAU**

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Executive Officer

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