

Central Valley Regional Water Quality Control Board  
22/23/24 September 2010 Board Meeting

Response to Comments  
for the  
City of Antioch, City of Oakley, City of Brentwood, Contra Costa County, and Contra  
Costa County Flood Control and Water Conservation District  
Municipal Separate Storm Sewer System (MS4) NPDES Permit  
Tentative Waste Discharge Requirements

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The following are Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) staff responses to comments submitted by interested parties regarding the tentative Waste Discharge Requirements for NPDES Permit No. CAS083313 (NPDES Permit) renewal for the Cities of Antioch, Oakley and Brentwood, Contra Costa County Flood Control and Water Conservation District and Contra Costa County (Permittees) jointly under the Contra Costa Clean Water Program (CCCWP).

Contra Costa County waterbodies drain to two watersheds, which are covered by two Regional Water Quality Control Boards as the Central Valley Water Board (Region 5) and San Francisco Bay Water Board (Region 2). On 14 October 2009, the San Francisco Bay Water Board adopted Waste Discharge Requirements for its regional storm water discharges from municipal storm sewer systems (referred to as the Municipal Regional Storm Water Permit or R2 MRP) as Order R2-2009-0074, NPDES Permit No. CAS612008. This Central Valley Water Board proposed Order is similar in nature and provides an inter-region collaborative approach. The San Francisco Bay Water Board R2 MRP applies to 77 San Francisco Bay regional jurisdictions and entities, including the western portion of Contra Costa County. The Permittees currently participate as members in the CCCWP along with the jurisdictions and entities under the R2 MRP. The CCCWP performs certain functions on behalf of its members, most of who are within the San Francisco Bay Water Board regional boundaries. The Permittees have indicated their interest in continuing to participate in the CCCWP and wish to coordinate the permit requirements of the two Regional Water Boards so that implementation of individual activities, and collective activities through the CCCWP, including funding and budgeting of those activities be as efficient and effective as possible.

This Order includes provisions that emulate those in the R2 MRP. Where the R2 MRP provisions are sufficient to meet the requirements of the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins, Fourth Edition* (hereafter Basin Plan) and other Central Valley Water Board policies, the provisions are the same as those in the R2 MRP. Where different or additional provisions are required to meet the requirements of the Basin Plan or other Central Valley Water Board policies, including the Sacramento-San Joaquin Delta Methylmercury Total Maximum Daily Load (TMDL), adopted on April 2010, those different or additional provisions are included in this Order. The Central Valley Water Board has coordinated with the San Francisco Bay Water Board, as appropriate, to provide consistency with the determination of compliance of similar permit requirements and deliverables.

The tentative NPDES Permit was issued for public comment on 19 July 2010 with comments due by 23 August 2010. The Central Valley Water Board received public comments regarding the tentative NPDES Permit by the due date from the Contra Costa Clean Water Program (CCCWP), and the U.S. Environmental Protection Agency (USEPA). Contra Costa County and the Contra Costa Flood Control and Water Conservation District submitted letters of support for comments submitted by CCCWP. Minor changes were made to the tentative NPDES Permit based on public comments received.

The submitted comments were accepted into the record, and are summarized below, followed by Central Valley Water Board staff responses.

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## **CONTRA COSTA CLEAN WATER PROGRAM COMMENTS**

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### **CCCWP Comment No. 1 and 5. Shared Goals, but Inadequate Coordination of Two Permits and Coordination of Two Permits and Statewide Consistency.**

The CCCWP requests this Order be similar in nature to the R2 MRP and provide an inter-region collaborative approach to provide consistency while allowing for differences in Basin Plan requirements and TMDLs. The CCCWP who represent the Permittees in Region 5, also coordinate activities for western Contra Costa County permittees under the R2 MRP. The CCCWP request this Order allow the east Contra Costa permittees continue participating in the CCCWP and wish to coordinate the permit requirements of the two Regional Water Boards so that implementation of individual activities, and collective activities through the CCCWP, including funding and budgeting of those activities be as efficient and effective as possible. This includes the coordinated efforts of the two Regions relative to report submittals.

**RESPONSE:** The Central Valley Water Board and San Francisco Bay Water Board have concurred with this request and have revised this Order accordingly. Findings No. 2 and 3 describe these coordinated efforts. We have added language at the end of Finding No. 4 as follows:

“ 4. This Order includes provisions that emulate those in the R2 MRP. Where the R2 MRP provisions are sufficient to meet the requirements of the Water Quality Control Plan for the Sacramento and San Joaquin River Basins, Fourth Edition (hereafter Basin Plan) and other Central Valley Water Board policies, the provisions are the same as those in the R2 MRP. Where different or additional provisions are required to meet the requirements of the Basin Plan or other Central Valley Water Board policies, including the Sacramento-San Joaquin Delta Methylmercury Total Maximum Daily Load (TMDL), adopted on April 2010, those different or additional provisions are included in this Order. The Central Valley Water Board will coordinate with the San Francisco Bay Water Board, as appropriate, to provide consistency with the determination of compliance of

similar permit requirements and deliverables. The Central Valley Water Board will also coordinate with the San Francisco Bay Water Board to maximize consistency in future revisions/renewals of the two MS4 permits.

### **CCCWP Comment No. 2 and 4. Disproportionate Burden and Other Unintended Negative Consequences and Summary of Issues to Be Coordinated and Resolved.**

The CCCWP states that some of the provisions will disrupt long-term partnerships and ongoing collaborative efforts in the San Francisco Bay Region and will result in duplication and misspent resources. A table of tabulated comments detail their concerns, as well as a summary of issues have been iterated in the comment letter.

**RESPONSE:** For purposes of clarity and efficiency, the Central Valley Water Board staff have responded to these comment by finalizing two documents that are attached to these Response to Comments. **Attachment A** provides a table of responses to itemized Provisions. **Attachment B** is an excerpt from the Order as Table 8.1 showing Track Changes.

### **CCCWP Comment No. 3. Inadequate Time to Coordinate Two Permits and to Prepare Comments**

The CCCWP requests an extension of time to allow for preparation of the proposed comments and other revisions due to the 30-day comment period, summer vacations, short-staff due to recent layoffs, furloughs and with annual reports due to both the Regional Water Boards in September.

**RESPONSE:** Code of Federal Regulations states in Part 40 (40 CFR) section 124.10(b) *Timing (applicable to State programs, see §§ 123.25 (NPDES));* 40 CFR section 124.10(b)(2) states: “Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.” The Central Valley Water Board sent the Permittees and All Interested Parties a Notice of Public Hearing, by CERTIFIED MAIL, providing the 30-day review period and date of the public hearing. The Central Valley Water Board staff has coordinated all proposed changes with the CCCWP and the San Francisco Bay Water Board.

The CCCWP and/or Permittees are welcome to comment at the hearing with respect to the proposed permit and notice of public hearing. The Notice of Public Hearing, dated 19 July 2010, provided procedures governing Central Valley Water Board meetings for those who wish to comment on the proposed Order and/or the procedures as follows:

“...All designated parties and interested persons may speak at the Central Valley Water Board meeting, and are expected to orally summarize their written submittals. Oral testimony and cross examination will be limited in time by the Board Chair....The procedures governing Central Valley Water Board meetings may be found at Title 23, California Code of Regulations, Section 647 et seq. and are available upon request. Hearings before the Central Valley Water Board are not conducted pursuant to Government Code section 11500 et seq. The procedures may be obtained by accessing [http://www.waterboards.ca.gov/board\\_info/calendar/index.shtml](http://www.waterboards.ca.gov/board_info/calendar/index.shtml). Information on meeting and hearing procedures is also available on the Central Valley Water Board’s website at [http://www.waterboards.ca.gov/centralvalley/board\\_info/meetings/mtgprocd.shtml](http://www.waterboards.ca.gov/centralvalley/board_info/meetings/mtgprocd.shtml) or by contacting any one of the Central Valley Water Board’s offices. Questions regarding such procedures should be directed to Ms. Kiran Lanfranchi-Rizzardi at (916) 464-4839.

The hearing facilities will be accessible to persons with disabilities. Individuals requiring special accommodations are requested to contact Ms. Kiran Lanfranchi-Rizzardi at (916) 464-4839 at least five working days prior to the meeting. TTY users may contact the California Relay Service at 1-800-735-2929 or voice line at 1-800-735-2922.”

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## USEPA COMMENTS

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### **USEPA Comment No. 1. Finding No. 23, 24 and 25 should be revised to reflect USEPA’s replacement statement regarding the Clean Water Act (CWA) section 402(p)(3)(B)(iii).**

The USEPA comments that the respective Findings 22, 23, and 24 (revised numbering) goes beyond Congressional intent of CWA section 402(p)(3)(B)(iii) regarding feasibility to establish numeric effluent limits for pollutants in storm water discharges from MS4s.

**RESPONSE:** Finding 22 is the Central Valley Water Board’s antidegradation statement and is not relative to CWA section 402(p). Finding 22 has been revised to clarify the intent as follows:

“22. This Order requires implementation of programs (i.e., Best Management Practices, or BMPs) to reduce the level of pollutants in storm water discharges to the maximum extent practicable (MEP) and any additional controls necessary to comply with the applicable Waste Load Allocations contained in approved TMDLs. With future development within the area, it is possible that future degradation in water quality could occur. Any such change in water quality will not unreasonably affect the present and anticipated beneficial uses of water and

will not result in water quality less than that prescribed in policies of the State Water Board. The programs required pursuant to this Order constitute the best practicable treatment or control techniques to control or minimize the effect of discharges necessary to ensure that any pollution or nuisance will not occur and the highest quality consistent with maximum benefit to people of the State will be maintained and is in accordance with federal and state antidegradation policies.”

**RESPONSE:** We concurred with USEPA’s replacement statement clarifying the intent of the CWA, therefore, Findings No. 23 and 24 were deleted and replaced with the following Finding 23:

“23. Clean Water Act section 402(p)(3)(B)(III) requires municipal separate storm sewer system (MS4) operator to control pollution in storm water to the “maximum extent practicable” (MEP). The MEP requirement is analogous to a technology-based requirement in that it focuses upon the feasibility of pollutant reduction measures rather than achievement of water quality standards in the receiving waters to achieve improvements in the quality of the storm water that is discharged. Compliance with the MEP requirement can range from implementation of structural and nonstructural best management practices to installation of end-of-pipe treatment systems. The MEP standard provides MS4 operators with considerable flexibility in proposing controls to be implemented through the development of a storm water management plan (see 55 Fed. Reg. 48037-38 and 48052-53 (Nov. 16, 1990)). However, the determination of what controls are sufficient to meet MEP is ultimately made by the Central Valley Water Board (40 CFR 122.26(d)(2)(iv)). Nevertheless, MEP does not define the limits of pollution control measures that may be required of MS4 operators, and the requirement to implement controls that reduce pollutants to the MEP is not limited by the goal of attaining water quality standards. In some circumstances, compliance with MEP is not limited by the goal of attaining water quality standards. The Central Valley Water Board may use its discretion to impose other provisions beyond MEP, as it determines appropriate for the control of pollutants including ensuring strict compliance with water quality standards, (Defenders of Wildlife V. Browner (1999) 191 F.3d 1159, 1168).”

**USEPA Comment No. 2. Recommends certain revisions to ensure consistency with applicable wasteload allocations (WLAs) from the TMDLs for mercury and pesticides as diazinon and chlorpyrifos.**

With regards to the mercury TMDL, USEPA recommended the Permit specifically require compliance with the WLAs by 2030 rather than just noting the compliance date established in the TMDL in the Permit.

**RESPONSE:** The State Water Resources Control Board (State Water Board) and the USEPA have yet to approve the newly adopted Basin Plan amendment

for the mercury TMDL, therefore the Permit cannot require compliance by a certain date. The Permit will not be changed.

With regards to pesticides TMDLs, USEPA recommended the permit and/or fact sheet be revised to include language ensuring compliance with the WLAs.

**RESPONSE:** USEPA banned the uses of diazinon and chlorpyrifos several years ago. The Central Valley Water Board staff considers this significant BMP will ensure compliance with the TMDL and will be verified by the water quality monitoring program. To clarify this statement, the Fact Sheet Findings in support of Provision C.9-1 has been revised as follows:

“C.9-1 This Permit fulfills the Basin Plan amendments the Central Valley Water Board adopted that establish Water Quality Objectives for Inland Surface Waters and Implementation program for the TMDL for Diazinon and Chlorpyrifos Runoff into the Sacramento-San Joaquin Delta Waterways (as identified in Appendix 42). The Water Quality Objectives for Inland Surface Waters and the Implementation program requires the Permittees to minimize their own pesticide use, conduct outreach to others, and lead monitoring efforts. Control measures implemented by urban runoff management agencies (i.e., Permittees) and other entities (except construction and industrial sites) shall reduce pesticides in urban runoff to the MEP and the permittees will use the included numeric WLAs as performance standards to determine if additional BMPs are needed to achieve the TMDL Numeric Target in the waterbody. The USEPA has banned the sale of all non-agricultural uses of diazinon and most non-agricultural uses of chlorpyrifos. This significant BMP adds to ensuring compliance with the TMDL conditions. In addition, water quality monitoring of pesticides specified in this permit will aid in determining compliance with the pesticide WLAs.”

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### **Contra Costa County Public Works Department and Flood Control and Water Conservation District (Permittees) COMMENTS**

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**The Contra Costa County Public Works Department and Flood Control and Water Conservation District concur with comments provided by CCCWP.**

These two Permittees of the five have provided their respective letters in support of the comments made by the CCCWP. They also share the desire to integrate the San Francisco Bay Water Board's R2 MRP within the Central Valley Water Board's proposed Order to eliminate duplicative efforts and prevent the reissued Order from imposing disproportionately burdensome requirements on the relatively small population of the five permittees in east Contra Costa County.

**RESPONSE:** The Central Valley Water Board have drafted the Order in a cooperative manner with the San Francisco Bay Water Board and with the

Permittees to provide consistency with the determination of compliance of similar permit requirements and deliverables with consideration of funding and budgeting individual and collective activities through the CCCWP.