



# WPHA

Western Plant Health Association

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**SUBJECT:** Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins for the Control of Diazinon and Chlorpyrifos

The Western Plant Health Association (WPHA) appreciates the opportunity to comment on the proposed revisions to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan) for the Control of Diazinon and Chlorpyrifos. WPHA represents the interests of crop protection and fertilizer manufacturers, agricultural biotechnology providers, and agricultural retailers in California, Arizona, and Hawaii.

WPHA, along with other agricultural organizations, provided comments on the previous version released last year and appreciates some of the revisions made in response to those comments. For other WPHA comments not addressed, many of those comments remain relevant but are not repeated here. However, WPHA has reviewed the staff's Response to Comments and finds it necessary to provide limited response to some of the staff responses. WPHA also has a number of comments on the proposed revisions to the Basin Plan. Our comments are presented here

## **I. Comments in Response to Appendix D - Responses to Comments<sup>1</sup>**

**Comment 1.2** - WPHA continues to express concern with the Central Valley Regional Water Quality Control Board's (Regional Board) approach for developing and applying new water quality objectives for pesticides that will apply to all waterbodies considered to be designated with WARM and/or COLD beneficial uses. The Regional Board's approach fails to consider that the broad application of WARM and/or COLD may not be appropriate as applied to many agricultural drainage and/or conveyance facilities.

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<sup>1</sup> In an effort to avoid confusion, WPHA follows the numeric identification of comments as presented in Appendix D.

While we recognize that the Regional Board is currently engaged in a comprehensive process to evaluate application of such beneficial uses to facilities of this type WPHA believes that such a process should be completed prior to the continued development of water quality objectives in the manner as proposed here. Otherwise, in the interim period between adoption of objectives and completion of the review of application of beneficial uses, the water quality objectives are likely to be applied as if WARM and/or COLD is applicable. Such application may trigger the need for actions that are not necessary considering the receiving water in question.

**Comment 1.7** - The Response to Comments states that the cost information contained in the Staff Report is adequate to satisfy Water Code section 13241 because “costs articulated in the Staff Report essentially rectify water quality impairments caused by non-compliance with the existing narrative objective.” This statement is prefaced by another statement that “the Board has already been citing the proposed numeric objective as an applicable water quality criteria to ensure compliance with the existing narrative objective.”

Read collectively, it appears that staff is trying to justify use of inadequate documentation of cost considerations because the proposed numeric objectives are already being used to interpret narrative water quality objectives. Such justification is also contained directly in the staff report: “Similar costs would likely be incurred even if the Board made no changes to water quality objectives, because growers would still need to meet the applicable narrative objectives.” (Staff Report, p. 115.)

This philosophy or approach to considering the statutorily mandated provisions for adoption of water quality objectives, directly contravenes the intent and purposes of the Porter-Cologne Water Quality Control Act (Porter-Cologne). The adoption of water quality objectives (both narrative and numeric) is supposed to be a public process that takes into account a number of considerations for the development of beneficial uses. Ultimately, adopted water quality objectives are to reasonably protect beneficial uses.

We believe that discounting consideration of the statutorily mandated factors by claiming such considerations are irrelevant because such criteria will be used to interpret narrative objectives undermines the intent of the law. Under this approach, the Regional Board will never be able to properly consider if a water quality objective is appropriate for adoption. Rather, Regional Board staff will continue to rely on the interpretation of narrative objectives without ever considering costs and reasonableness associated with meeting the numeric value used to interpret the objective.

WPHA encourages the Regional Board to reject this approach when considering adoption of numeric objectives, and believes that the Staff Report should be revised to ensure proper consideration of the Water Code section 13241 factors.

**Comment 1.8** - The staff's response to WPHA's comment is not responsive. Specifically, WPHA stated that the data evaluation in section 1.5 of the staff report was not sufficient to inform the reader if the data evaluated was temporally representative. The response does not directly answer this question. Rather, it just states that the listing policy allows the Regional Board to consider data collected during a rain event. It is still unknown if the data evaluated would be considered temporally representative.

## **II. Comments on Appendix C - Proposed Basin Plan Amendment**

**Specific Pesticide Objectives, Page C-1** - The proposed Basin Plan Amendment proposes to list specific waterbodies to which the objectives would apply, and also proposes to indicate that the objectives are also applicable to waters with designated beneficial uses of WARM and/or COLD. Because the objective would apply to waters with such designated beneficial uses, it is unnecessary to individually list a sub-set of water bodies.

Further, to the extent that the Regional Board's process for consideration of beneficial uses finds that one of the specifically listed water bodies does not properly include WARM and/or COLD beneficial uses, a Basin Plan amendment would be required to remove application of the water quality objective. Accordingly, WPHA recommends that the references to the individual water bodies be removed.

**Diazinon and Chlorpyrifos Discharges, provision 1.c, Page C-5** - The language in this subdivision refers to concentrations in the discharge versus concentrations in the receiving waters. Water quality objectives apply to receiving waters and are not discharge limitations. Accordingly, references to meeting water quality objectives in the discharge itself should be deleted. We recommend that this provision be revised as follows: "Encourage implementation of measures or practices by all dischargers that result in concentrations of chlorpyrifos and diazinon in all applicable waters discharges that are below the water quality objectives."

**Diazinon and Chlorpyrifos Discharges, provision 2, Page C-5** - Similar to the comments immediately above, this provision needs to be revised to specifically refer to water quality objectives as they apply to the receiving water and not to the discharge. Accordingly, we recommend that the term "in applicable waters" be added to the end of this provision.

**Diazinon and Chlorpyrifos Discharges, provision 3, Page C-5** - Rather than including an arbitrary date in the Basin Plan for compliance with water quality objectives, WPHA recommends that time schedules in waste discharge requirements and waivers be set according to existing time schedule policies contained in laws and policies. For example, for irrigated agriculture, time schedules are established in waste discharge requirements for meeting receiving water limitations. Such limitations are essentially equivalent to adopted water quality objectives.

In such waste discharge requirements, growers are required to meet receiving water limitations immediately, or they are subject to management plans that must include a schedule for compliance. The schedules for compliance in management plans must be as short as practicable but cannot exceed ten years. The Executive Officer maintains the discretion to adopt the management plans, and the proposed schedule. Because it is addressed within the waste discharge requirements, it is unnecessary to include a specific time for compliance as part of the Basin Plan amendment. Provision 3 should be revised to reflect this accordingly.

**Agricultural Discharge Monitoring, provision 4, Page C-8** – WPHA believes that provision 4 should be removed. While we recognize the Regional Board’s long-term commitment to ensure replacement products are not affecting water quality, we feel this issue is currently being addressed through the current irrigated lands waste discharge requirement process. We see no benefit in duplicating a process that is already in place. The current process requires the Regional Board, the Department of Pesticide Regulation (DPR), and the various third parties to work in tandem to develop a process for identification of alternative pesticides that should be monitored for in the various watersheds. The Regional Boards and DPR are in a much better position to help identify such alternatives.

Without inclusion of an additional step to determine if alternatives should be monitored, the provision will significantly increase agricultural costs. As proposed, there is no language that would allow the board to suspend monitoring for a pesticide or group of pesticides. This could lead to unnecessary costs for monitoring products that are no longer being utilized, or demonstrated to not be problematic. If the Board intends to move forward with the proposed provision, we recommend language be included that provides the Board the ability to suspend monitoring when applicable.

**Diazinon and Chlorpyrifos Discharges, provisions 6 and 7, Page C-5 through C-6** - Provision 6 is unnecessary. Considering the waste discharge requirements for irrigated agriculture, there is no need for an independent management plan to be required by the

proposed Basin Plan amendments. Rather than including specific provisions, the Basin Plan amendment should refer to management plan requirements contained in the irrigated lands waste discharge requirements.

**Diazinon and Chlorpyrifos Discharges, provision 8, Page C-7** - Provision 8 is a restatement of the law and is unnecessary. All adopted waste discharge requirements or waivers are required to be consistent with the Basin Plan. Thus, it is unnecessary to repeat the requirement here.

Thank you for your consideration of our comments. We look forward to future discussions on this issue. If you have any questions, please contact me at (916) 574-9744.

Sincerely,

A handwritten signature in black ink that reads "Rachel Kubiak". The signature is written in a cursive style with a large initial "R".

Rachel Kubiak  
Director of Environmental and Regulatory Affairs  
Western Plant Health Association