Bay Area Clean Water Agencies

Leading the Way to Protect Our Bay
A Joint Powers Public Agency

P.O. Box 24055, MS 702
Oakland, California 94623

ITEM 4
February 2, 2005 Workshop/Board Meeting
Hrd cys: Board, DI, DWQ
E-mail to: Bd, CC, KS, HMS, TH, etc.

January 25, 2005

Via U.S. and Electronic Mail

Arthur G. Baggett, Jr., Chair and Members
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95814

ATTN: Debbie Irvin, Clerk to the Board
dirvin@waterboards.ca.gov

Dear Chairman Baggett and Members:

Subject: Comments on the Draft FED dated December 2004 for Proposed Revisions to the Statewide Implementation Policy for Toxics - SWRCB Public Hearing February 2, 2005, Agenda Item No. 4

The Bay Area Clean Water Agencies (BACWA) offer the following comments regarding the draft Functional Equivalent Document (FED) for the proposed revisions to the Policy for the Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays and Estuaries of California (SIP) currently being developed by the SWRCB. We previously submitted comments on the scope of the FED on November 12, 2004, which are incorporated herein by reference. BACWA has previously supported revisions to the SIP that would allow (a) Water Effects Ratios (WER) to be established through permitting actions, and (b) eliminate entirely the reasonable potential trigger based on ambient background concentrations exceeding a water quality objective (WQO). We offer the following specific comments regarding Revisions to Section 1.2 and 1.3 of the SIP for your consideration.

Revisions to Section 1.2

We recommend adding to the end of the second paragraph in Section 1.1 a statement to capture the fact that WERs are already pre-authorized by the CTR. Specifically add "The CTR allows the use of WERs to adjust the criteria arsenic, cadmium, chromium(III), chromium(VI), copper, lead, nickel, silver and zinc per 40 CFR Part 131.38 (b)(1) footnote "i".

We also recommend adding to the end of the first (new) sentence in Section 1.2 the clause from the issue description (... "or other scientifically defensible methods adopted by the state") to allow for the use of other scientifically defensible methods like the biotic ligand model (BLM) or streamlined WERs, where appropriate, in addition to conventional WERs.

CENTRALCONTRA COSTA SANITARY DISTRICT *CITY AND COUNTY OF SAN FRANCISCO* *CITY OF SAN JOSE*
EAST BAY DISCHARGERS AUTHORITY *EAST BAY MUNICIPAL UTILITY DISTRICT*

Revisions to Section 1.3

BACWA supports the elimination of the ambient background trigger for the determination of reasonable potential. Ambient background exceedances of WQOs indicate the potential for water quality impairment and as such are most appropriately addressed through the 303(d) listing process in accordance with the SWRCB's September 30, 2005 303(d) Listing Policy. If a water quality objective is exceeded in the receiving water only and is a problem, this would be identified during water quality assessment conducted as part of the 303(d) listing process, which would result if appropriate, in the development of Total Maximum Daily Loads (TMDLs). Once these TMDLs are developed, waste load allocations (WLA) for point sources which are protective of water quality would be determined.

The SWRCB staff recommended Alternative 2, does not eliminate the ambient trigger and the inherent overlap and redundancy with the 303(d) listing policy process. Instead Alternative 2 would add a clause that if there is any detected effluent concentration less than the WQO when the ambient concentration is above the WQO, that combination would trigger RP and require effluent limits. Under this scenario there is no linkage established between the discharge and the ambient concentration. We do not believe that the current approach provides any additional water quality protection. It will still require effluent limits even when they are not truly necessary to protect ambient water quality.

The proposed approach would be a negative incentive for improving (lowering) detection limits. It would also result in some unintended if not illogical consequences. For example, many POTWs in the San Francisco Bay area have effluent limits for the legacy pollutants DDE and dieldrin solely because a very small number of ambient samples have concentrations above the respective WQOs. All effluent values are non-detect. Under the Alternative 2 proposal, there would no longer be RP for DDE/dieldrin, since current detection limits are above the WQOs and therefore no trigger requiring effluent limits. However, once analytical methods improve and detection limits are reduced such that you can measure detectable effluent concentrations below the WQO, there would again be a finding of RP and a requirement for effluent limits. POTWs would be able to definitely show that there was no RP per their maximum effluent concentration (MEC) trigger (instead of the current indeterminate RP results when all values are ND) but they would still be required to have DDE/dieldrin limits.

For these reasons BACWA does not believe it is necessary or appropriate to continue to use ambient concentrations in the RPA process. The issue description describes the ambient trigger as "a proactive means to ensure no further impairment occurs" then conversely states that "However, this approach could be maintained by requiring dischargers to monitor for the presence of the pollutant in their effluent." BACWA agrees that continued monitoring is the appropriate response to elevated ambient concentrations and supports continued monitoring as allowed pursuant to SIP Section 1.2 and Section 1.3 Step 8. The Regional Monitoring Program continues to collect and provide high quality ambient data in the Bay area. For areas of the state with such high quality monitoring programs the RPA ambient trigger would be an unnecessary and redundant mechanism for establishing monitoring requirements.

Recommended Changes to Section 1.3

BACWA recommends that the SWRCB adopt a modified version of Alternative 3 where the ambient trigger (Steps 5 and 6) would be deleted and the rest of the RPA approach in Section 1.3 left as is. SWRCB could consider the merits of future revisions to the SIP for potential consistency with the Ocean Plan proposed RPA approach as appropriate during future revisions to the SIP. Attached to this letter are 1) redline strikeout suggested changes to Section 1.3 and Alternative 3 and 2) a correspondingly edited version of the RPA flowchart from Appendix 2.

Thank you for your consideration of our comments. If you have any questions, please contact Michel Pla, BACWA Executive Director at (510) 547-1174.

Very truly yours,

Michael Carlin, Chair
BACWA Executive Board

Attachments
Cc: Sharon Green, CASA
Roberta Larson, Tri-TAC

BACWA PREFERRED ALTERNATIVE

Formatted

Modified Alternative 3. Eliminate the ambient background trigger.

Under this alternative, the use of ambient background concentrations would be eliminated. Steps 5 and 6 of Section 1.3 would be deleted and Steps 7 and 8 renumbered to Steps 5 and 6. Permit writers would retain the discretion under Section 1.2 and the original Step 8 (new step 6) to determine the extent of additional ambient monitoring to require. The evaluation of ambient data would continue to be conducted by RWQCB and SWRCB staff but pursuant to the SWRCB 303(d) Listing Policy (09/30/05) not the SIP. The remainder of the RP process would remain unchanged. SWRCB staff may consider changing to the Ocean Plan or other statistical RP approach during future amendments to the SIP.

STAFF RECOMMENDATION

Adopt Modified Alternative 3.

Deleted: Alternative 3. Reconstruct reasonable potential process ¶
Under this alternative, the use of ambient background concentrations could be eliminated altogether and a new method for determining reasonable potential could be used. For example, the California Ocean Plan (Ocean Plan) is identifying a statistical method to determine reasonable potential that is less complex while providing scientific defensibility. ¶

Deleted: 2

1.3 Determination of Priority Pollutants Requiring Water Quality-Based Effluent Limitations

The RWQCB shall conduct the analysis in this section for each priority pollutant with an applicable criterion or objective, excluding priority pollutants for which a Total Maximum Daily Load (TMDL) has been developed, to determine if a water quality-based effluent limitation is required in the discharger's permit. It is the discharger's responsibility to provide all information requested by the RWQCB for use in the analysis. The RWQCB shall use all available, valid, relevant, representative information, as described in section 1.2, to determine whether a discharge may: (1) cause, (2) have a reasonable potential to cause, or (3) contribute to an excursion above any applicable priority pollutant criterion or objective. If the following analysis (which is depicted as a flowchart in Appendix 2) indicates that a limitation for a pollutant is required, the RWQCB shall establish the limitation in accordance with section 1.4. Within each step below, if it is necessary to express a dissolved metal or selenium value as total recoverable and a site-specific translator has not yet been developed, as described in section 1.4.1, the RWQCB shall use the applicable U.S. EPA conversion factor (Appendix 3).

Step 1: Identify applicable water quality criteria and objectives for priority pollutants as described in section 1.1. Determine the lowest (most stringent) water quality criterion or objective for the pollutant applicable to the receiving water (C). Adjust the criterion or objective for hardness and/or pH, if applicable, as described in section 1.2.

Step 2: Identify all effluent data for the pollutant as described in section 1.2 and proceed with *Step 3*. If effluent data are unavailable or insufficient, as described in section 1.2, proceed with *Step 5*.

Step 3: Determine the observed maximum pollutant concentration for the effluent (MEC). If the pollutant was detected, proceed with *Step 4*. If the pollutant was not detected in any of the effluent samples and any of the reported detection limits are below the C, use the lowest detection limit as the MEC and proceed with *Step 4*. If the pollutant was not detected in any of the effluent samples and all of the reported detection limits are greater than or equal to the C value, proceed with *Step 5*.

Step 4: Adjust the MEC from *Step 3* for hardness and/or pH, if applicable, as described in section 1.2. Compare the MEC from *Step 3* or the adjusted MEC to the C from *Step 1*. If the MEC is greater than or equal to the C, an effluent limitation is required and the analysis for the subject pollutant is complete. If the MEC is less than the C, proceed with *Step 5*.

Step 5: Review other information available to determine if a water quality-based effluent limitation is required, notwithstanding the above analysis in *Steps 1* through 4, to protect beneficial uses.

Deleted: *Step 5:* Determine the observed maximum ambient background concentration for the pollutant (B) as described in section 1.4.3.1. If the pollutant was detected, proceed with *Step 6*. If B data are unavailable or insufficient, as described in section 1.2, proceed with *Step 7*.¶
¶
Step 6: Adjust the B from *Step 5* for hardness and/or pH, if applicable, as described in section 1.2. Compare the B from *Step 5* or the adjusted B to the C from *Step 1*. If the B is greater than the C and the pollutant is detected in the effluent, an effluent limitation is required and the analysis for the subject pollutant is complete. If B is greater than the C and the pollutant was not detected in any of the effluent samples, effluent monitoring is required as described in *Step 8*. If the B is less than or equal to the C, proceed with *Step 7*.¶

Deleted: 7

Deleted: *5*

Information that may be used to aid in determining if a water quality-based effluent limitation is required includes: the facility type, the discharge type, solids loading analysis, lack of dilution, history of compliance problems, potential toxic impact of discharge, fish tissue residue data, water quality and beneficial uses of the receiving water, CWA 303(d) listing for the pollutant, the presence of endangered or threatened species or critical habitat, and other information. If data or other information is unavailable or insufficient, as described in section 1.2, to determine if a water quality-based effluent limitation is required, proceed with *Step 7*

__Step 7__: If data are unavailable or insufficient, as described in section 1.2, to conduct the above analysis for the pollutant, or if all reported detection limits of the pollutant in the effluent are greater than or equal to the C value, the RWQCB shall require additional monitoring for the pollutant in place of a water quality-based effluent limitation. Upon completion of the required monitoring, the RWQCB shall use the gathered data to conduct the analysis in *Steps 1* through 6 above and determine if a water quality-based effluent limitation is required. If, upon completion of the monitoring required by Step 7 and the subsequent analysis in *Steps 1* through 6, a specific pollutant was not detected in any effluent or if ambient background sample and applicable detection limits are greater than or equal to the C value, the RWQCB may require periodic monitoring of the pollutant.

The RWQCB shall require periodic monitoring (at least once prior to the issuance and reissuance of a permit) for pollutants for which criteria or objectives apply and for which no effluent limitations have been established; however, the RWQCB may choose to exempt low volume discharges, determined to have no significant adverse impact on water quality, from this monitoring requirement.

Comment: It seems as if the most you would go through the entire RP analysis is twice. You get to Step 7 by not meeting the criteria of the previous 6 steps. But the thing that triggers you to go on to Step 8 is insufficient data, which would have already been taken care of in the previous round of RP analysis. Therefore, the RB would have to use BPJ to determine RP.

Deleted: 8

Deleted: 8

Deleted: "

Deleted: 8

Deleted: "

Deleted: <sp><sp><sp><sp><sp><sp><sp><sp><sp><sp><sp><sp><sp><sp><sp><sp><sp><sp><sp><sp><sp><sp><sp><sp><sp><sp><sp>

APPENDIX 2 (2-1)

Determination of Pollutants
Requiring Water Quality-Based
Effluent Limitations

Effluent Data Only RPA
Modified Option 3