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January 25, 2005

ITEM 4

February 2, 2005 Workshop/Board Meeting

Hrd cys: Board, DI, DWQ

E-mail to: Bd, CC, KS, HMS, TH, etc.

By FACSMILE AND EMAIL

Ms. Debbie Irvin

Executive Office

Water Resources Control Board

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Sacramento, CA 95814

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Re: Comments on Proposed Revisions to State Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays and Estuaries of California

Dear Ms. Irvin:

Heal the Bay submits the following comments on the State's proposed revisions contained to the State Policy for Implementation of Toxics Standards for Inland Surface Waters and Enclosed Bays and Estuaries (SIP). Heal the Bay has been actively involved with the formation of this plan for many years, including participation on the State Board's Effluent Dependent Water Bodies and Chemical task forces for the development of the Inland Surface Waters and Enclosed Bays and Estuaries plan. We also provided extensively recommendations on the SIP in 1997, 2002 and 2003.

Heal the Bay has commented extensively on the flaws in the existing SIP which result in failure to protect or improve water quality in California and we herein incorporate those comments by reference.¹ We remain concerned about these major flaws and confused as to the priorities for current revisions to the SIP. Previous comments by Heal the Bay and other groups have detailed our concerns that SIP is a disincentive for dischargers to achieve minimum levels (MLs) that are lower than CTR limits, that the SIP results in too few effluent limits in NPDES permits, and that the SIP does not regulate stormwater discharges, when in fact it should.

The State Board is requesting comments on the proposed revisions only. These revisions do not address the important issues we have raised in our previous, above-referenced comment letters; nonetheless Heal the Bay submits the following comments on the proposed revisions to the SIP.

1. Do Not Establish Water Effects Ratios as part of the permit process.

It is inappropriate to allow establishment of water effects ratios (WERs) as part of the permit process because WERs may substantially alter effluent limits for toxic pollutants discharged to receiving waters. A WER should only be applied if rigorous studies show that higher-than-CTR levels of a given toxic chemical are not harmful to the most sensitive aquatic species, and that cumulative effects of the higher levels will not have negative impacts on the

¹ See letters from Heal the Bay to the SWRCB on 17 December 1999, 21 February 2000, 8 December 2002 and 18 September 2003.



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most sensitive downstream species, or on downstream habitats such as estuaries. There are many variables to consider in this process, including test species, method of data analysis, and other technical aspects of toxicity testing and application of results to biological systems. For example, when a WER leads to increased loads of a contaminant, there may be impacts to water and/or sediment quality at the downstream receiving water, i.e. the estuary. There may also be increased bioaccumulation in organisms.

The site-specific objective (SSO) requirement of a Basin Plan amendment ensures adequate expert review of the test procedures, quality assurance/quality control requirements, data analysis and other technical aspects of the WER development. The NPDES permit process does not involve a working group or technical advisory panel and generally has only one public review period, unlike the typical SSO development process and subsequent Basin Plan amendment. There is no justification for including establishment of WERs as part of the NPDES permitting process. The development of WERs for toxic chemicals should continue to require the rigorous procedures of the SSO and Basin Plan amendment procedures.

2. Do Not Eliminate the reasonable potential trigger from SIP section 1.3 when ambient background pollutant concentrations are greater than the water quality criterion.

If a pollutant is present in a receiving water at concentrations greater than the CTR limit, then the receiving water is impaired by that pollutant. The proposed revision would allow dischargers to merely monitor such pollutants without imposing an effluent limit on them. This is not protective of human health or aquatic life as it allows discharge of pollutants that already exceed CTR limits in receiving waters, until that pollutant is detected in a monitoring program, reported to the RWQCB and included in the next NPDES permit issued to the discharger. The existing SIP policy of applying effluent limits to such pollutants before they occur in a discharge is protective of water quality because it prevents those pollutants from being discharged to an already-impaired receiving water at any time.

In conclusion, these comments re-iterate our preliminary comments of September 18, 2003 on the same issues. Our comments were not addressed in the current proposed revisions. We have witnessed firsthand the debilitating effect this policy has already had on the Regional Boards' abilities to develop NPDES permits that are protective of water quality. The reasonable potential analysis in the SIP has repeatedly led to NPDES permits that are less protective of water quality than permits issued prior to the approval of the CTR. The new proposed changes will exacerbate the problem by allowing WERs to be established through the NPDES permit process, circumventing the full review process that is currently required for site specific objectives. It is imperative that the State Board revise the SIP to provide the clarification necessary to protect California's waters.

Sincerely,

Dr. Shelley Luce
Science and Policy Director

Heal the Bay
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