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Arthur G. Baggett, Jr., Chair
State Water Resources Control Board
P.O. Box 100
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Dear Chairman Baggett:

The State Water Resources Control Board's ("State Board") Chief Counsel provided you a memo concerning pollutant trading/offsets on October 16, 2001. On behalf of Tri-TAC, the statewide organization representing publicly owned treatment works ("POTWs"), I strongly encourage the State Board to develop a pollutant trading/offsets program in California consistent with the thoughts and principles set forth below.

Tri-TAC is pleased that the Chief Counsel does not believe that legal roadblocks to program implementation exist. We concur and urge the State Board to begin program development immediately. POTWs want to be involved and we stand ready to participate in workgroup(s) and/or other activities that the State Board undertakes.

Tri-TAC has developed the attached set of "Core Principles" which we believe are critical for a workable program. Below are the key concepts of those principles:

1. *Voluntary*-The trading/offsets program must be voluntary so that POTWs can choose offsets, source control, water reclamation or other pollutant reduction options, such as pollution prevention and public education, depending on the situation.
2. *Stable, Reasonable Costs*-Wide fluctuations in cost or high cost of trading will have to be controlled (most likely by in-depth State involvement) in program implementation.

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3. *Offset Ratio*-The offsets ratio should not be greater than 1:1, unless a different ratio is scientifically supported and justified for a particular case.
4. *Credit Details*-Water reclamation, environmental enhancement, benefit area and timing must be considered in calculating offset credits.
5. *Mitigation Bank*- A "bank" of feasible projects/offset programs must be organized with substantial State assistance so that they are ready when needed.
6. *Documentation*- Clear legal documentation of offsets (or trades) in NPDES permits will be necessary to attract local government participation. The documentation must clarify that liability for a third parties actions (or inaction) is not transferred to the POTW.

Tri-TAC would very much like to participate in the development of a pollutant trading/offset program in California. We understand that you have taken the first step with a January meeting that Bobbi Larson of CASA attended on our behalf. Please let us know the next opportunity for involvement and we will support the effort in whatever way we can. We support the concept of promoting pilot projects as a way of moving forward and look forward to helping to identify and work on individual pilot projects.

Sincerely,



Dave Williams
Chair, Tri-TAC

Attachment

Cc: Craig M. Wilson, Esq.
Bobbi Larson, CASA

POTW CORE PRINCIPLES REGARDING POLLUTANT OFFSETS: FOR DISCUSSION

1. Pollutant Offsets Must Be An Optional Tool

- A. California Water Code section 13360(a) prohibits the State from dictating the means of compliance with a requirement, order, or decree, and offsets would be a means of compliance.
- B. Many considerations must be taken into account before a community can choose whether to implement an offset program, including, but not limited to, liabilities in the transaction, or whether local community support exists for funding activities outside their jurisdiction. POTWs must be able to choose the most cost-effective method of meeting effluent limits in order to meet their obligations to their ratepayers.

2. The Cost of Offsets to POTWs Must Be Stable, and Must Be Reasonably Related to Actual Implementation Costs

- A. The costs associated with offsets must be stable, because a very important criterion for using limited public funds responsibly is to take relatively low risks in spending those funds. Wagering in an open market for offsets where wide price fluctuations prevail may simply preclude POTWs from participating altogether.
- B. The cost of offsets must be commensurate with the actual cost of implementing reductions.
- C. Examples of pricing options:
 - i. A statewide pricing system
 - ii. Market-based system

3. The Offset Ratio Must Be 1:1 Unless Sound Science Demonstrates A Higher Ratio is Appropriate

- A. In general, a default offset ratio for pollutants of 1:1 is fair, reasonable, defensible and predictable.
- B. In certain circumstances, alternative offset ratios may be appropriate to account for different forms or different locations associated with various pollutant sources. For example, if there is sound scientific information quantifying the extent to which a pollutant being reduced as part of an offset is less bioavailable than the pollutant being increased, then we would consider a higher offset ratio.
- C. The program should allow for cross-pollutant trading on a limited basis.

4. Credit Details

- A. POTWs Must Get Credit for Water Reclamation- projects which reduce the mass discharge to a receiving water.
- B. POTWs are Interested in Exploring Offsets of Specific Pollutants with Other Environmental Enhancement Programs
- C. Timing Must Be Considered in Offset Transactions
 - i. The duration of the credit/offset should be the same as the length of time during which the reduction is expected to occur. (e.g. , If , at the time the credit/offset is established , a 10 lb/yr reduction is expected to occur each year indefinitely , then the credit/offset would also be established indefinitely.)

Credit for offsets should, generally, begin accruing when the offset transaction occurs. However, to avoid penalizing proactive agencies, a system should be established immediately which records offset actions taken back to an agreeable point in time (e.g., 303(d) listing).
 - iii. If the need for the respective pollutant reduction goes away, the need for the offset should likewise be removed.
- D. Additional incentives or credits should be given for projects which are upstream of the discharge point and therefore create a benefit over a larger geographic area.

5. A “Mitigation Bank” is an Important Option in the Offset Program

- A. The mitigation bank, as a State entity or working in cooperation with the State, would identify and prioritize projects. The mitigation bank, or the State, would develop criteria for establishing a cost per pound (or other appropriate unit) for treatment or cleanup of a specific pollutant.
- B. A mitigation bank is also a potential vehicle for environmental enhancement programs as a trade for offsets, as described below.

6. The Offset Program Must be Documented Appropriately

- A. An NPDES permit and/or other enforcement mechanisms are appropriate places to document the details and agreements associated with an offset transaction.
 - i. The permit should specifically reference and/or incorporate the offset agreement.

- ii. Permit conditions pertaining to compliance with an offset agreement must be measurable and attainable. For instance, permit conditions could require one of the following: (1) completion of verifiable control measures which are projected to produce a specified mass emission reduction, (2) accomplishment of a measurable mass emission reduction in an identified discharge, or (3) provision of a stipulated level of funding which would provide funding for implementation of control measures by other parties. In this case, the permit and payment contract must state that the entity providing the funds is not liable for failure of the other parties to obtain pollutant reductions, or for any other act by the other parties. Formalization of these conditions should occur in the development of the offset agreement.
- iii. Offset permit conditions must be flexible to provide adequate long term certainty (e.g. minimum of 15 to 20 years).