



**Tri-TAC**  
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*Via Electronic and U.S. Mail*

September 18, 2003

Dena McCann, Division of Water Quality  
State Water Resources Control Board  
1101 I Street  
Sacramento, CA 95814

**SUBJECT: REVISIONS TO THE STATE POLICY FOR IMPLEMENTATION OF TOXICS STANDARDS FOR INLAND SURFACE WATERS/ENCLOSED BAYS AND ESTUARIES OF CALIFORNIA (SIP) —September 30, 2003 SWRCB Workshop**

Dear Ms. McCann:

The California Association of Sanitation Agencies (CASA) and Tri-TAC are pleased to provide comments regarding the proposed revisions to the SIP. CASA and Tri-TAC support the staff recommendations for substantive revisions to the SIP as set forth in the staff report to address implementation of Basin Plan narrative toxicity objectives, allow Water Effects Ratios (WERs) to be established as permitting actions, and eliminate the reasonable potential trigger based solely on ambient background concentrations.

The proposed revisions are appreciated, and will improve the permit process. To ensure a workable process for implementing toxics criteria, however, additional changes to the SIP are needed. There are also several "outside the SIP" tasks that we believe are important to appropriate regulation of POTWs. We look forward to the opportunity to work with the SWRCB to determine the best means of accomplishing these tasks. Toward that end, we recommend that the SWRCB involve interested stakeholders in the development of amendments to the SIP, as well as proposed guidance and direction "outside the SIP." We also recognize that the SWRCB's resources are very limited, and that taking on these additional tasks may not be feasible within existing staffing and funding levels. For this reason, we are willing to explore the possibility of outside funding for these additional efforts if the SWRCB agrees that the recommended actions are worthwhile.

**1. Additional Proposed Revisions to the SIP**

**Metals Translator Implementation**

We previously requested that Sections 1.3 and 1.4 be modified to avoid regulation of trace metals as total (or total recoverable) metals. In particular, the use of translators to "adjust" dissolved metals objectives into total recoverable "objectives" in the Section 1.3 procedure results in use of ambient total recoverable metals values in the determination of "reasonable potential." Similarly, the current prescribed use of translators in Section 1.4 results in the use of total recoverable metals ambient data in the consideration of dilution in the effluent limit calculation. This results in inaccurate determinations of assimilative capacity, which can lead to a denial of

dilution credit in cases where such credit could appropriately have been granted (*see* recently adopted NPDES permits for the City of Yuba City and the City of West Sacramento).

It appears that the SWRCB does not believe this is a significant enough issue for the SIP review. For example, the Staff Report notes that few dischargers have proposed translators for Regional Board approval, yet there is no indication of the reason this is so. In fact, we believe the reason more dischargers have not sought to apply translators is that the SIP procedure actually yields more stringent limitations. We are also concerned about the characterization of the actual relationship between dissolved and total recoverable metals in ambient waters. (Response to Comments, p. 10). This relationship is determined through the ambient measurements that produce empirical information for a given water body, which leads to the establishment of a translator value.

Translators are not used as multipliers to be applied to CTR dissolved standards to establish a total recoverable metal objective in the receiving water. Instead, the proper use of the translator is to predict the amount of total recoverable metal in effluent that will be dissolved after discharge. This is achieved by applying the translator value later in the calculation procedure rather than earlier in the calculation (as is currently required in the SIP). This approach was endorsed in the December 16, 2002 comment letter submitted by the San Francisco Bay Regional Board. The following language changes will accomplish this objective:

Section 1.3, Step 1: Eliminate the fourth sentence.

Section 1.4, B, Step 1: Eliminate the third sentence.

Section 1.4, B, Step 2: Add the word “and” after the word “hardness” and eliminate the phrase beginning with “and translators...”.

Section 1.4, Step 5: Eliminate the words “as follows” from the end of the first sentence. Add a second and third sentence, which states “For trace metals which have dissolved objectives, adjust the aquatic life-based effluent limitations to total recoverable values by dividing the translator value into the calculated AMEL and MDEL values. The calculation procedure is as follows:

$$\text{AMEL}_{\text{aquatic life}} = \text{LTA} * \text{AMEL multiplier} / \text{translator value (for trace metals only)}$$

$$\text{MDEL}_{\text{aquatic life}} = \text{LTA} * \text{MDEL multiplier} / \text{translator value (for trace metals only)}$$

Section 1.4.1, Eliminate the phrase in the first sentence which follows the word “selenium”, and substitute the following: “a translator must be applied to the effluent concentration allowance (ECA) by dividing the ECA by the translator value.”

This change is consistent with USEPA Metals Policy and the CTR, is technically defensible, would not require extensive SWRCB staff time, and would resolve a number of unnecessary permit conflicts. We urge the SWRCB to reconsider the rationale offered in the Response to Comments for maintaining the current SIP approach.

#### ***De Minimis* Consideration in Reasonable Potential (RP) Determination**

We originally commented that the RP determination should provide flexibility to take the magnitude of a discharge, specifically *de minimis* discharges, into account. We respectfully disagree with the statement in the Response to Comments that if “*reasonable potential exists, the discharge is not de minimis...Discharges that don't have reasonable potential are de minimis.*” This conclusion was rejected by the SWRCB in the Napa Sanitation District order, and Board members have expressed interest in identifying options for addressing *de minimis* discharges. The relative mass load from a given source (relative to all sources contributing to an existing ambient level of a constituent) is a key factor, since the magnitude of the mass load has a significant effect on water quality conditions. The relative mass load of a permitted discharge should be considered in the determination of RP, where such loading information is available. This approach is frequently used when conducting a simplified antidegradation review, where the discharger can demonstrate there will not be a

significant increase in pollutant loadings to a waterbody. Regional Boards should be encouraged to use their discretion to distinguish discharges with a measurable impact on water quality from those with only a calculable but insignificant impact on water quality.

The RP procedure in the SIP operates purely from concentration (as opposed to mass) and therefore does not currently address the key factor that affects a *de minimis* determination. Consider the example where an NPDES discharge with a very small flow rate discharging into a very large river has an MEC (concentration) that slightly exceeds the applicable water quality concentration (C). Under the SIP, the discharge would be deemed to have a “reasonable potential” to cause or contribute to the violation of the objective. In reality, the actual impact of this particular discharge on the ambient water quality at the point of discharge would be insignificant and may be immeasurable, due to the small relative mass load associated with the discharge. Rather than the “reasonable potential” procedure being used to identify a *de minimis* situation, the *de minimis* condition should be used to identify situations where reasonable potential as determined by the SIP procedure does not actually exist. The SIP already allows the flexibility to determine RP even where the prescribed procedure demonstrates that none exists; the Policy should also allow a decision of no RP where consistent with the facts. It is requested that the following language be added to Section 1.3, Step 7, second paragraph:

First sentence, insert the words “presence or” before the words “lack of dilution”. First sentence, insert the words “the relative magnitude of mass loading from the facility in comparison to loadings from other sources as measured by the existing ambient load” before the words “and other information”.

## **2. Additional Proposed Non-Regulatory Language Corrections**

### **Special Considerations for Bioaccumulative Pollutants**

The SIP describes and encourages more restrictive Regional Board actions and decisions regarding RP determinations, dilution credits and mass limits for bioaccumulative and 303(d)-listed pollutants. (See Sections 1.3 (Step 7)(“reasonable potential”), Section 1.4.2.2.B (Mixing zone and dilution credit) and Section 2.1.1 (mass limits).) The Response to Comments states that no specific outcome is assumed, but that the SIP must allow discretion to Regional Boards with respect to bioaccumulative pollutants and 303(d)-listed pollutants. We endorse this flexibility where it is supported by adequate scientific justification. This can be accomplished by amending the SIP to expressly require a demonstration that such actions are appropriate or valid.

The SIP should be clarified to require Regional Boards to meet a reasonable standard of scientific justification (beyond a simple determination that a pollutant is bioaccumulative or is 303(d) listed) before imposing special restrictions that would otherwise not be implemented. We suggest that Section 1.4.2.2.B. be amended as follows:

Insert a new sentence following the third sentence, as follows: “The Regional Board must document the specific rationale for any limitation of dilution credit for a pollutant in one or more of these categories. The designation of a pollutant as belonging to one of these categories is by itself not a sufficient basis for such a determination.”

### **Dynamic versus Steady State Modeling**

It has been requested that the SIP recognize that “reasonable potential” and effluent limit determinations based on sound dynamic modeling should be held in preference to results from steady state modeling. We do not dispute the statement in the Response to Comments that the steady state approach is appropriate where data sets are limited. It is appropriate, however, to recognize the material difference between the two modeling approaches. The SIP steady state approach as described in Section 1.4.B is a simplified approach, used where adequate data are not available and appropriate modeling tools have not been utilized. The dynamic modeling approach requires extensive data sets on effluent and receiving water and is more rigorous in its assessment of water quality conditions at a given point of discharge. Where both approaches have been applied, the dynamic modeling results clearly provide a better representation of the water quality impacts of a given discharge. To ensure that the SIP does not inadvertently discourage the use of dynamic models, the SIP should be clarified as follows:

(1) Revise Section 1.4 of the SIP (Page 11, as follows):

Drop the letter “C” and insert the word “or” preceding the sentence which begins “Apply a dynamic model...”. Change letter “D” to “C” preceding the sentence which begins “Establish effluent limitations that consider intake water...”.

(2) Revise Section 1.3, Step 7 by adding a third paragraph, as follows:

“Where information is available from a dynamic modeling effort approved by the Regional Board, that information shall be used to the maximum extent practicable in the determination of the reasonable potential to cause or contribute to a violation of water quality objectives in the receiving water (at the edge of an approved mixing zone, where applicable).”

### **Case-by-Case Exceptions**

The Staff Report notes that the SWRCB is evaluating ways to make the use of SIP exceptions a more viable option. We strongly support this effort, because many of our members have felt the current procedures to be onerous and even unworkable. We also continue to recommend that the SWRCB provide a “streamlined” statewide (categorical) exception to dischargers to EDWs currently designated MUN from CTR, NTR and Basin Plan human health criteria and objectives. In addition, the SWRCB should develop “template” exceptions from policy provisions such as reasonable potential, numeric effluent limitations, mixing zones, etc. and provide explicit guidance to the regional boards as to how to apply these. The critical issues for exceptions are that the criteria must be relatively easy to identify and evaluate and that the exceptions should be able to be implemented quickly, to provide relief at the time of permitting.

### **3. Additional Proposed Actions Outside the SIP**

The challenge of NPDES permitting in effluent dependent waters (EDWs) is a significant issue for California POTWs. We appreciate the recognition in the staff report of the need for options and solutions that promote water quality protection while reflecting site-specific EDW conditions. Through discussions with SWRCB staff, we have identified two tasks that will help advance this goal.

- ❖ **Review and Refinement of Designated Uses into Subcategories:** The SWRCB should refine the existing beneficial use categories, develop subcategories of uses, and provide specific, step-by-step guidance to the regional boards as to how these use designations are to be applied. This should include criteria/factors that should trigger a review of use designations currently in Basin Plans.
- ❖ **Revision of the State Sources of Drinking Water Policy:** The SWRCB should revise the Sources of Drinking Water Policy (Resolution 88-16) to clarify exceptions and specify that the policy will not be applied to designate MUN except where Department of Health Services criteria for permitting drinking water supplies are satisfied.

Thank you for the opportunity to provide our comments on the proposed SIP revisions. We request that the SWRCB expand the Work Plan to include the additional tasks outlined, and engage the POTW community in discussions regarding provision of the resources necessary to accomplish the needed revisions.

Sincerely,

Sharon N. Green, Chair  
Tri-TAC

Roberta L. Larson, Director  
Legal & Regulatory Affairs  
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