STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WQO 2003 - 0002

In the Matter of the Petition of

CITY OF STOCKTON

For Review of Waste Discharge Requirements
Order No. R5-2002-0083 (NPDES No. CA0079183) and Cease and Desist Order
No. R5-2002-0084 for Stockton Regional Wastewater Control Facility
Issued by the
California Regional Water Quality Control Board,
Central Valley Region

SWRCB/OCC FILE A-1483

BY THE BOARD:

In this order, the State Water Resources Control Board (State Board or Board) remands in part Waste Discharge Requirements Order No. R5-2002-0083 (WDRs), setting forth waste discharge requirements for the City of Stockton's Regional Wastewater Control Facility, to the Central Valley Regional Water Quality Control Board (Regional Board) to reevaluate the effluent limitations for chloroform and dichloromethane, and to clarify the effluent limitations for diazinon.

I. BACKGROUND

The City of Stockton (Petitioner) seeks review of the WDRs, and the related Cease and Desist Order No. R5-2002-0084 (CDO), issued by the Regional Board on April 26, 2002, with respect to its Regional Wastewater Control Facility (RWCF) in San Joaquin County. The petition was timely filed on May 28, 2002, and includes voluminous challenges to most portions of the WDRs and CDO, primarily stemming from the Regional Board's decision to deny dilution credits and a mixing zone for most constituents, including ammonia.[1] This Order is directed to a few discrete portions of the

[1] The Regional Board granted 10:1 dilution credits for chloroform and dichloromethane, and 9.8:1 for trichloroethene.

petition.[2] The State Board received responses to the petition from the Regional Board and from Delta Keeper,[3] which was granted party status in this proceeding and was a party before the Regional Board.[4]

On January 22, 2003, the State Board adopted WQO 2002-0018, approving a stipulation between the Petitioner and the Regional Board for a stay of portions of the Regional Board's orders pending review.

II. CONTENTIONS AND FINDINGS

Contention: The Petitioner claims that the Regional Board acted arbitrarily and improperly in rejecting the Petitioner's recommendation for, and offer to fund, an independent technical expert or committee to review the issue of dilution and mixing-zone allowance.

Finding: The Petitioner's suggestion that it fund outside technical experts to assist the Regional Board in certain technical matters presents an intriguing opportunity that may merit consideration in some circumstances. In the instant proceeding, however, the Petitioner has made no showing that its offer was timely presented to the Regional Board, that the funding was in place to timely accomplish the task, or that the Regional Board (as opposed to the party offering to fund the consultants) would have the authority to direct and supervise the scope of work. To the contrary, the record shows the Petitioner made no such offer, but merely stated in the last sentence of its closing

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[2] To the extent this Order does not address all of the issues raised by Petitioner, the Board finds that the issues that are not addressed are insubstantial and not appropriate for State Board review. (See *People v. Barry* (1987) 194 Cal.App.3d 158 [239 Cal.Rptr. 349].)

[3] In its response, Delta Keeper acknowledges not having filed a petition in this matter, yet nonetheless requests we address numerous alleged errors of the Regional Board. These matters were not timely raised, and the request is denied.

[4] On October 24, 2002, we received Petitioner's "Supplemental Memorandum in Support of Petition for Review" and a request that it be considered. The Regional Board objects to the submittal. While we retain discretion to authorize additional pleadings, State Board regulations generally contemplate that petitioners submit all their arguments and points and authorities with the petition. (See Cal. Code Regs., tit. 23, §§ 2050, 2050.5.) Petitioner declined invitations to file supplemental pleadings both on June 24, 2002, and in the July 23, 2002 notice that the petition was complete. The July 23 notice required any such pleading to be submitted within 10 days after the record was filed and limited to discussing those parts of the record the Petitioner had not yet received. The notice also requested that the parties not submit replies to responses to the petition. (See *id*.) The Petitioner replied it could not comply within the time allowed, but would consult the Regional Board and propose an alternative date. The State Board received no such proposal. Instead, the subject pleading was filed more than three months later—well after review was underway. Directly contrary to the July 23 notice, the pleading states it "is based on . . . [a] complete review of the record . . .[and] addresses . . . the [Regional Board's] . . .Response to the petition." Nor does it identify any documents from
[footnote continued next page]

argument, that the Petitioner "is prepared to support" and provide the funding for such a study. The Regional Board had just listened to numerous experts testifying on behalf of the Petitioner. To suggest that a bona fide offer existed, much less that the Regional Board somehow acted inappropriately in not interrupting the board meeting to commission a new study based on that one comment, is not consistent with the events as born out in the record. The Petitioner has not demonstrated how the Regional Board abused its discretion in that regard, and we find no such abuse of discretion here. In appropriate circumstances, however, when a regional board determines that such outside assistance would be beneficial, it would not be an abuse of discretion for the regional board to avail itself of such an offer, and the regional board is encouraged to do so.

Contention: The Petitioner claims that the Regional Board acted arbitrarily and improperly in denying dilution credits and a mixing zone for ammonia and other constituents.

Finding: We find no abuse of discretion in denying the dilution credits and mixing zone. Some of the relevant constituents are non-priority pollutants for which the Water Quality Control Plan for the Central Valley Region (Basin Plan) contains applicable provisions. It provides that "the Regional Water Board may designate mixing zones within which water quality objectives will not apply provided the discharger has demonstrated to the satisfaction of the Regional Water Board that the mixing zone will not adversely impact beneficial uses." (Basin Plan, p. IV-17.00.) Other relevant constituents are priority pollutants, which are governed by the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP). It also authorizes the regional boards to allow mixing zones and dilution credits in appropriate circumstances. (SIP, § 1.4.2.) While the Regional Board has broad discretion to determine whether a mixing zone is appropriate, that discretion must be properly exercised. The Regional Board considered numerous factors in its decision to reject the Petitioner's flow studies and deny dilution credits. Included among these are real-time flow data from the Ultrasonic Velocity Meter (UVM), which shows that dilution has been minimal during above-average wet years for all conditions, the available UVM data are from above-average wet years, tidal influences permit the receiving water to be dosed with effluent multiple times, the inadequacy of the

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the administrative record that Petitioner had not yet received. The request to consider the submittal is denied. Its attachment and incorporation into Stockton's February 28, 2003, comments is stricken from the record.

existing models, the fact that the receiving water is impaired, and the presence of threatened and endangered species. The Regional Board also noted numerous flaws and areas of uncertainty regarding the reliability of the dilution studies, including, but not limited to the lack of real-time flow data for the San Joaquin River near the discharge during dry-year conditions. The burden was squarely upon the Petitioner to prove that dilution existed, and the Regional Board's finding that the Petitioner did not meet that burden is supported by substantial evidence.[5]

Contention: The Regional Board acted arbitrarily and unreasonably in calculating the effluent limitations for chloroform and dichloromethane, and did not comply with section 13241 of the Water Code.

Finding: We have previously held that when a Regional Board includes permit limits more stringent than limits that would be based on an applicable numerical objective in the relevant basin plan or the California Toxics Rule (CTR), the Regional Board must address the section 13241 factors in the permit findings. (See *e.g.*, State Board Order WQO 2002-15, p. 35.) Neither the CTR nor the Basin Plan contains numerical objectives for chloroform. Instead, the limitations were based on narrative water quality objectives in the Basin Plan. Accordingly, the Regional Board's adoption of effluent limitations for chloroform need not consider the section 13241 factors. A construction of Water Code section 13263 that requires a section 13241 analysis every time a numerical effluent limitation is derived from a narrative water quality objective, that itself was established pursuant to section 13241, would render such objectives illusory. Moreover, it would multiply the burden imposed on the regional boards because each discharger would be entitled to an individualized consideration of the section 13241 factors in order to establish effluent limitations that implement water quality standards appropriate for each discharger. We have declined to accept this construction in the past, and decline again to do so here.

The CTR, however, does contain a numerical criterion for dichloromethane (identified as methylene-chloride). (40 C.F.R. § 131.38(b)(1) #36.) The Regional Board contends that this effluent limitation was calculated in accordance with SIP using applicable CTR criteria, and is therefore not subject to Water Code sections 13241 and 13263. According to Fact Sheet Tables 11-1, 11-4,

[5] The Petitioner's related request for a hearing before the State Board is hereby denied.

and 11-5, however, the Regional Board did not use the existing CTR criterion of 4.7 micrograms per liter (ìg/l) for dichloromethane, but instead selected the more stringent criteria guidance from the Office of Environmental Health and Hazard Assessment, which recommends 4.0 ìg/l as a public health goal for drinking water. The Basin Plan requires the Regional Board to consider relevant numerical criteria and guidelines developed by other agencies in determining compliance with the narrative toxicity objective. (Basin Plan, IV-17.00.) While the Regional Board does not abuse its discretion by deriving a more stringent effluent limitation from a narrative objective than would exist from an applicable CTR criterion that was developed to protect the same beneficial use as the narrative objective, when doing so, the Regional Board must address the section 13241 factors. Accordingly, we remand the effluent limitation for dichloromethane for consideration of the section 13241 factors. If appropriate, the Regional Board may base the effluent limitations upon the applicable CTR criterion instead.

Contention: The effluent limitation for chloroform is derived from the U.S. Environmental Protection Agency (USEPA) National Recommended Ambient Water Quality Criteria for Human Health, which is 5.7 ìg/l. The 5.7 ìg/l is not an adopted criterion for chloroform, and was rejected in the final CTR. The Regional Board's use of an unadopted criterion and superseded criterion is arbitrary and unreasonable and results in adoption of new water quality objectives without compliance with Porter-Cologne, the California Environmental Quality Act, and the California Administrative Act.

Finding: This Board recently addressed a similar argument that was raised by the City of Vacaville, relating to chloroform, in State Board Order WQO 2002-15, pages 52-53, adopted on October 3, 2002. For the same reasons described in Order WQO 2002-15, the chloroform effluent limitation is inappropriate, and should be reconsidered by the Regional Board.

Contention: The diazinon effluent limitation is derived from Department of Fish and Game (DFG) recommendations. In relying on the DFG recommendations, the Regional Board failed to explain the rationale for accepting these DFG recommendations in the record, and there is no evidence to support that the DFG recommendations are applicable or appropriate for the RWCF, or for the receiving waters.

Finding: The interim effluent limit of 0.1 ìg/l is appropriate. According to the Fact Sheet, Table 12-1, the Regional Board used the DFG recommended criteria guidance and applied procedures that are consistent with the SIP to calculate an Average Monthly Effluent Limit of 0.047 ìg/l

and a Maximum Daily Effluent Limit of 0.061 ìg/l for diazinon. The Regional Board's explanation and evidence are provided in the permit Finding 31 and Fact Sheet Section 12 and Table 12. The Petitioner alleges neither facts nor authority for the suggestion that use of the DFG criteria guidance was not appropriate. Absent some such demonstration, the explanation in the Fact Sheet is adequate.

The Permit Effluent Limitation B.1 for diazinon, however, was set at 0.1 ìg/l. An explanation for the final permit limit is not provided in the permit, however, the Fact Sheet, Table 12 also used USEPA Technical Support Document statistical procedures to calculate an Estimated Maximum Concentration of 0.10 ìg/l diazinon. It appears the Regional Board may have intended to adopt a performance based interim limit of 0.1 ìg/l for diazinon, but mistakenly placed the limit in the permit as a final limitation. If so, the Regional Board should correct the WDRs and adopt a final effluent limitation for diazinon. (33 U.S.C. § 1311; 40 C.F.R. § 122.44(d).)

III. CONCLUSION

Based on the above discussion, the State Board concludes that:

1. The Regional Board's determination in this matter not to employ outside consultants was not inappropriate or improper.

2. The Regional Board's determination not to grant dilutions credits or a mixing zone for ammonia was appropriate and proper.

3. The effluent limitation for chloroform, based on the unadopted CTR criterion of 5.7 ìg/l is inappropriate for the reasons set forth in State Board Order WQO 2002-15.

4. The effluent limitation for dichloromethane was inappropriately derived without compliance with Water Code section 13241.

5. The Regional Board did not act inappropriately in basing the diazinon effluent limitation upon DFG criteria guidance; however, the Regional Board must clarify the WDRs to

reflect whether the effluent limitation of 0.1 ìg/l is indeed an interim limit, and, if appropriate, must adopt a final effluent limitation for diazinon.

6. In all other respects, the petition is dismissed.

IV. ORDER

IT IS HEREBY ORDERED that, for the reasons discussed above, those portions of Waste Discharge Requirements Order No. R5-2002-0083 is remanded to the Regional Board for further proceedings consistent with this Order. Pursuant to its terms, the stay is dissolved at this time.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on March 19, 2003.

AYE: Arthur G. Bagget, Jr.
Peter S. Silva
Richard Katz

NO: None

ABSENT: None

ABSTAIN: Gary M. Carlton

Maureen Marché
Clerk to the Board