



COALITION FOR PRACTICAL REGULATION

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Via Fax and U.S. Mail

November 5, 2004

Dena McCann
 Division of Water Quality
 State Water Resources Control Board
 P.O. Box 100
 Sacramento, CA 95812-0100

Re: Scope and Content of Draft Functional Equivalent Document (FED) for the Proposed Revisions to the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP)

Dear Ms. McCann

I am writing on behalf of the Coalition for Practical Regulation (CPR) to provide comments on the Scope and Content of the Environmental Information that should be included in the Draft Functional Equivalent Document (FED) for the Proposed Revisions to the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California. CPR is an ad-hoc group of 43 cities within Los Angeles County that have come together to address water quality issues. Our comments expand upon testimony given by Richard Watson at the Public Scoping Meeting for SIP Revisions on 12 November. We appreciate the extension of time for submitting comments on the proposed revisions to the SIP and on the FED.

CPR's comments relate to the third of the three issues listed in the Notice of Public Scoping Meeting, the clean-up of non-regulatory language. To reiterate Mr. Watson's comments at the 12 November Scoping Meeting, we would like to point out an important item that has not yet been "cleaned-up" properly. Footnote 1 of the Introduction to the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (SIP) states, in part, "This Policy does not apply to regulation of stormwater discharges." The proposed changes, intended to clarify that the SIP does not apply to nonpoint sources or to stormwater, do not sufficiently clarify the situation. Neither the SIP nor the California Toxics Rule (CTR) applies to stormwater. The only change related to stormwater is the addition of a citation to Order WQ 2001-15. Unless revised further, one interpretation of current language will require additional economic and environmental analysis by the State Board.

ASCADIA
 ARTESIA
 BALDWIN PARK
 BELL
 BELLFLOWER
 BELL GARDENS
 BRADBURY
 CERRITOS
 COMMERCE
 COMPTON
 COVINA
 DIAMOND BAR
 DOWNEY
 GARDENA
 HAWAIIAN GARDENS
 INDUSTRY
 IRVINDALE
 LA CANADA FLETNIDGE
 LA MIRADA
 LAKEWOOD
 LAWRENDALE
 MONROVIA
 MONTEBELLO
 MONTEREY PARK
 NORWALK
 PALMS VERDES ESTATES
 PABANQUOT
 PICO RIVERA
 PUMONA
 RANCHO PALMS VERDES
 ROSEMead
 SANTA FE SPRINGS
 SAN GABRIEL
 SIERRA MADRE
 SIGNAL HILL
 SOUTH EL MONTE
 SOUTH GATE
 SOUTH PASADENA
 TEMPLE CITY
 VERNON
 WALNUT
 WEST COVINA
 WHITTIER

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The CTR expressly allows application of maximum extent practicable (MEP) standards and does not apply any numeric standards to stormwater. In the *CTR Response to Comments* document EPA states, "The purpose of the CTR is to fill the current gaps in water quality criteria in inland surface waters, enclosed bays, and estuaries." (There are a number of EPA statements in the Response to Comments Document. See EPA response CTR-036-004a.) EPA also acknowledges that neither the CTR nor EPA regulations require numeric effluent limitations in municipal stormwater permits, and that BMPs can substitute for numeric limitations. EPA notes,

"...the CTR language allows the practice of applying maximum extent practicable (MEP) to MS4 permits, along with best management practices (BMPs) as effluent limits to meet water quality standards where infeasible or insufficient information exists to develop WQBELs [water quality based effluent limits].

Section 402(p)(3)(B) requires municipal separate storm water systems to 1) prohibit non-storm water discharges, and 2) reduce the discharge of pollutants in storm water to MEP. The Agency has purposely not defined MEP to allow municipalities flexibility in designing pollution control measures. MEP is a dynamic performance standard which requires the municipality to demonstrate permit compliance in many ways including the use of BMPs, proper maintenance of their BMPs, and ongoing assessment of BMP performance in reducing pollutant discharges." (See EPA response to CTR-040-004.)

As EPA allows the application of an MEP standard, together with BMPs as effluent limits, it is unclear what "gap in water quality criteria" would be filled by applying the Rule to stormwater.

Furthermore, the State Water Resources Control Board (SWRCB) has determined that it is not feasible to establish numeric effluent limitations for stormwater. The new Fact Sheet for Water Quality Order 99-08 DWQ notes that, "The reasons why it is not feasible to establish numeric effluent limits are discussed in detail in SWRCB Order Nos. WQ 91-03 and WQ 91-04." In SWRCB Order WQ 91-03, the SWRCB determined that the use of BMPs to achieve both the technology-based effluent limitations and the water quality-based effluent limitations complies with the CWA and the Porter-Cologne Act. In SWRCB Order No. WQ 91-04, the State Board found that numeric effluent limitations, including toxic substance limitations, should not be applied to stormwater.

The Introduction to the CTR states that "this rule is not self-implementing; rather it establishes ambient conditions that the State of California will implement in future permit proceedings." It further states that the SIP is intended to be the State's policy for implementing the CTR, NTR, and priority pollutants in the Basin Plan. The State Board should include a revision to Footnote 1 that California is not applying the CTR to

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stormwater discharges at least until the proposed separate stormwater policy is completed.

Despite the explicit assertion that it is "not self-implementing," we understand that State Board attorneys have concluded that since the SIP does not apply to stormwater, the CTR applies to stormwater by default. If the State Board is going to follow that reasoning, the Board will have to perform the economic and environmental analyses that were not done by USEPA.

EPA states that the Agency "did not include benefits or costs of controlling nonpoint sources or stormwater discharges in its estimates of benefits and costs of the CTR." (See EPA response to CTR-034-014e.) EPA is a Federal Agency, and not subject to the requirements of the Porter-Cologne Act, which is a State law. As such, they did not perform the Economic Analysis, environmental analyses, or other analyses required by Porter-Cologne. They were deferring to the State to implement the CTR. EPA further states,

"Any potential indirect effect on nonpoint sources and wet weather discharges, such as runoff from farms, urban areas, abandoned mines, and contaminated sediment, is either unknown at this time or not a result of this rule." (See EPA response to CTR-034-014e.)

EPA's Economic Analysis (EA) of the California Toxics Rule states that "until the State implements these water quality standards, there will be no effect of this rule on any entity." It also notes, "The State of California has significant flexibility and discretion as to how it chooses to implement the CTR with the NPDES permit program." The EA clearly focuses on 184 major point sources, including POTWs and industries that discharge to California's inland waters, enclosed bays, and estuaries. Minor point source discharges were not expected to incur significant impacts as a result of State implementation of CTR water quality criteria.

Further, EPA did not perform an Economic Analysis for small communities; however, we now have Phase II of the municipal NPDES program, which includes many small communities. Therefore, if the State Board follows the interpretation we understand the attorneys have made, the Board will be applying these criteria to small communities, and will have to conduct the required analyses regarding economic impacts, as the EPA clearly did not do so.

The deficiency of suitable economic information is carried forward into the CEQA checklist, which indicates that there would be "no impact" with regard to the economic implications of requiring stormwater dischargers to comply with the California Toxics Rule. This is not true. Municipalities have underfunded, overstrained budgets; if CTR criteria were to be applied to stormwater, cities would likely have to take money away from other important programs. USEPA did not intend the CTR to be an unfunded

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mandate on stormwater. If the language remains unchanged, the CEQA checklist would have to be corrected to account for what would, in fact, be a real economic impact on municipal stormwater dischargers. Cities would have to divert their resources from other services, which would indeed have fiscal implications.

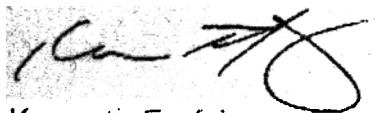
Regarding implementation, the CTR states that "since the publication of the proposed CTR, the State of California adopted procedures that detail how water quality criteria will be implemented through NPDES permits, waste discharge requirements, and other regulatory approaches." State Board staff notes in the Introduction to the SIP that the Policy establishes implementation provisions for priority pollutant criteria promulgated by USEPA and for priority pollutant objectives established by Regional Water Quality Control Boards in the Basin Plan," but there are no implementation provisions for stormwater. If this policy does not apply to stormwater, how do the 126 priority toxic pollutant criteria in the CTR and NTR relate to stormwater?

EPA also notes that if the State does not adopt statewide implementation provisions, the CTR-based water quality standards would be implemented using existing State Basin Plan provisions and EPA regulations and guidance. The State has adopted statewide implementation provisions, but their relationship to stormwater is unclear. Therefore, the SIP should clarify that a separate stormwater policy is being developed and that the relationship of priority pollutants to stormwater will be addressed in that policy. It should also clarify that until that policy is complete, the CTR will not be applied to stormwater discharges.

In the Staff Recommendation on page 14 of the *Informational Document on Revisions to the Policy*, staff states of the need to modify language, "The changes would improve clarity and provide a better understanding of how SIP provisions are to be applied in permits." However, the proposed revisions do not clarify the relationship of the CTR to stormwater. CPR asserts that "cleaning up" the footnote language to clarify that neither the SIP nor the CTR applies to stormwater is a necessary revision to maintain the integrity of the stormwater program as it is implemented in this State.

Thank you for the opportunity to comment on the Proposed Revisions to the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California. The Coalition for Practical Regulation looks forward to continuing to work with the State Board to clarify and strengthen stormwater policy in our state.

Sincerely,



Kenneth Farfsing
City Manager, City of Signal Hill
CPR Steering Committee