

CVCWA Central Valley Clean Water Association

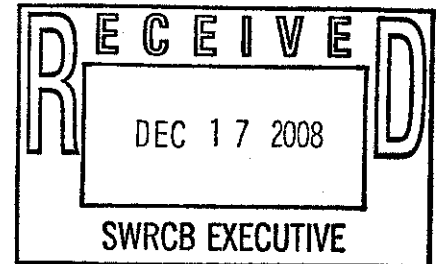
Representing Over Sixty Wastewater Agencies

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December 17, 2008

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



SUBJECT: Periodic Review of the “Statement of Policy with Respect to Maintaining High Quality Waters in California” – State Water Resources Control Board Resolution No. 68-16

Dear Ms. Townsend:

The Central Valley Clean Water Association (CVCWA) submits the following comments in response to the State Water Resources Control Board’s (State Water Board) notice regarding *Periodic Review of the “Statement of Policy with Respect to Maintaining High Quality of Waters in California”* (Anti-Degradation Policy) (State Water Board Resolution No. 68-16). CVCWA represents the interests of more than 60 wastewater agencies in the Central Valley in regulatory matters related to water quality and the environment. CVCWA’s member agencies are directly and indirectly impacted by existing and future regulatory decisions and policy actions relative to application and implementation of State Water Board Resolution No. 68-16.

To facilitate the State Water Board’s review, our comments are presented as responses to the questions contained in the public notice.

Should the State’s Anti-degradation Policy be revised as it pertains to surface waters?

CVCWA recommends that State Water Board Resolution No. 68-16 NOT be revised as it pertains to surface waters. The application of the State’s Anti-degradation Policy to most surface water discharges is coupled with the federal antidegradation policy set forth in Title 40 of the Code of Federal Regulations. Because of the overlap, and similar requirements contained in both policies, the two policies work together well. Changes to State Water Board Resolution No. 68-16 as it applies to surface waters could upset the harmonious relationship between the two.

Should the implementation procedures as contained in APU 90-004 be revised?

CVCWA recommends that the implementation procedures contained in APU 90-004 be maintained as is. The implementation procedures are straightforward and provide for a reasonable interpretation and application of the State and Federal Antidegradation policies as they are applied collectively. Further, CVCWA recommends that when applying the implementation procedures contained in APU 90-004, the Water Boards continue to interpret the appropriate water quality baseline for conducting an antidegradation analysis as the condition allowed by the previously adopted NPDES permit. If the discharger is not seeking an increase in discharge volume, relocating the point of discharge, or causing a significant water quality impact, an antidegradation analysis should not be required.

Should the implementation procedures be formally adopted as guidance or regulations by the State Water Board?

No. CVCWA does not believe it appropriate or necessary to formally adopt the implementing guidance contained in APU 90-004. APU 90-004 "provides guidance for the Regional Boards for implementing State Board Resolution No. 68-16, ..., and the Federal Antidegradation Policy, as set forth in 40 CFR 131.12." (APU 90-004 at p. 1.) APU does not substantively change or alter either policy, nor does it create new regulatory requirements. As indicated, it is guidance that describes a process and considerations that Regional Water Boards may consider in their implementation of the policies. It does not expressly require the Regional Water Boards to take a specific action or follow a precise formula pertaining to implementation of antidegradation policies. As guidance, the APU allows sufficient flexibility to tailor the analysis to the conditions of the proposed discharge and the characteristics of the receiving water body.

Should the implementation procedures in APU 90-004 be expanded beyond the point source discharge permitting program?

CVCWA has no position on this question. To the extent that CVCWA's members discharge to surface waters, they are considered point sources and are therefore subject to the NPDES permitting program. Thus, expansion of APU 90-004 beyond point sources does not directly or indirectly impact CVCWA's members.

Should the State's Anti-degradation Policy be revised as it applies to groundwater?

Before answering this question, CVCWA finds it necessary to first comment on the State Water Board's current interpretation and application of State Water Board Resolution No. 68-16 to discharges to groundwater. It appears to CVCWA that a significant amount of confusion currently exists as to when and how State Water Board Resolution No. 68-16 applies to the establishment of limitations for the protection of groundwater. We believe it is helpful to provide some clarity on several key points.

First, State Water Board Resolution No. 68-16 applies "where the receiving water is of better quality than the Basin Plan objective." (See *In the Matter of the Petition of the City of Lompoc* (Lompoc Order), Order No. WQ 81-5 at p. 7 (noting that when the receiving water is better than water quality objectives the establishment of limitations must be consistent with the State's nondegradation policy).) This basic principle is clear in a number of State Water Board orders, including *In the Matter of the Petition of San Luis Obispo Golf and Country Club* (San Luis

Obispo Order) in 2000. (See *In the Matter of the Petition of San Luis Obispo Golf Course Order WQ 2000-07* at pp. 8-14; see also *Lompoc Order* at p. 7.) In the San Luis Obispo Order, the State Water Board determined that it was necessary to apply State Water Board Resolution No. 68-16 to limitations for TDS and chloride because the ambient groundwater quality for these two constituents was of better quality than the applicable water quality objective. (*Id.*) The State Water Board did not consider application of State Water Board Resolution No. 68-16 to the limitations for sodium because, in that case, the level of sodium in the groundwater quality exceeded the applicable water quality objective. (*Id.* at pp. 12-13.)

By extension, the "best practicable treatment or control" provisions in State Water Board Resolution No. 68-16 only apply when the groundwater quality is better than the applicable water quality objective. "State Water Board Resolution 68-16 allows some degradation of high quality water if the discharge is required to meet waste discharge requirements which will result in the 'best practicable treatment or control' of the discharge and will not result in water quality less than that prescribed in the policies." (See *San Luis Obispo Order* at p. 10.) In contrast, the current practice (or misunderstanding) in the Central Valley is to require a best practicable treatment or control (BPTC) study or assessment for constituents in the effluent regardless of groundwater quality that may be impacted by the discharge of effluent to land (i.e., regardless of whether the groundwater is high quality or not).

Second, in situations where the ambient groundwater quality meets or exceeds the applicable water quality objective, Regional Water Boards must set limitations no higher than the objective set forth in the Basin Plan, with some exceptions. (See *Lompoc Order* at pp. 6-7; see also *San Luis Obispo Order* at p. 7.) One exception to the rule is where it can be shown that "a higher discharge limitation is appropriate due to system mixing or removal of the constituent through percolation through the ground to the aquifer." (*Lompoc Order* at p. 6.) "Where compliance with the limitations cannot be achieved by reasonable efforts, review of the appropriateness of the water quality objective may be required." (*Lompoc Order* at p. 6, fn. 2.) While the strict application of this principle may be problematic and may require additional policy considerations by the State Water Board, this principle is a function of the water quality objectives and is not tied to application of State Water Board Resolution No. 68-16, which only addresses high quality waters.

Because of the limited application of State Water Board Resolution No. 68-16 as confirmed by precedential State Water Board orders, any discussions regarding revisions to State Water Board Resolution No. 68-16 today must necessarily be limited to situations where the groundwater is of better quality than the applicable water quality objective, unless the State Water Board intends to expand the current scope of State Water Board Resolution No. 68-16. As discussed below, CVCWA does not support such an expansion.

With this background established, CVCWA now summarizes its recommendations regarding the application of State Water Board Resolution No. 68-16, and the strict application of water quality objectives to protect existing and anticipated beneficial uses.

- CVCWA does not recommend expanding the current scope of State Water Board Resolution No. 68-16. Instead, CVCWA encourages the State Water Board to prepare a memorandum that summarizes existing water quality orders pertaining to State Water Board Resolution No. 68-16, and that clarifies when Regional Water Boards should apply its provisions. For example, the State Water Board should clarify that after the

groundwater quality has been appropriately characterized for constituents that are present in the effluent and of concern to groundwater quality, the Regional Water Board should consider what limitations may be necessary to protect and maintain the high quality of groundwater. In such situations, effluent limitations may be set higher than the applicable objectives (see Lompoc Order at p. 6). Groundwater constituents that are present at concentrations well below applicable water quality objectives should not be considered to be of concern and Regional Water Boards should have discretion to set, or not set, limitations accordingly. Again, the application of State Water Board Resolution No. 68-16 in such cases would only apply to constituents where groundwater quality is better than applicable water quality objectives.

- To determine if groundwater quality is high (i.e., better than or below applicable water quality objectives), CVCWA recommends that the baseline be established at the time of the permitting action, where feasible. In some cases, it may be necessary to provide appropriate and reasonable seasonal timeframes for groundwater quality studies within the permit.
- CVCWA recommends that the State Water Board provide better direction with regard to the proper application of groundwater beneficial uses and water quality objectives. For example, groundwater beneficial uses and water quality objectives are often applied to groundwater where first encountered, and not at the point of use, such as confined or sustainable aquifers. Instead of determining groundwater quality and its compliance with water quality objectives as first encountered beneath the wastewater treatment facility, or its land discharge area, the State Water Board should declare that groundwater beneficial uses and water quality objectives apply at the actual point of use with allowances for monitoring along the hydrologic migration. Thus, compliance with objectives should be determined at the point that groundwater is pumped for agricultural or municipal uses. This would help to allow for system natural attenuation or removal through or soil treatment as anticipated in State Water Board orders.
- CVCWA recommends that the State Water Board provide better direction with regard to the actual application of groundwater beneficial uses and water quality objectives. In addition, there may be site-specific environmental, legal or regulatory conditions that define areas without existing or anticipated agricultural or municipal uses. For example, there is often significant stratification of groundwater as a function of elevation below the surface. First occurrence of groundwater can be site-specifically defined by depth to the first aquifer that is used, or suitable for use, for agricultural or municipal uses.
- Where the groundwater is degraded (i.e., exceeds applicable water quality objectives and is not subject to State Water Board Resolution No. 68-16), the State Water Board should provide for a process to allow for the development and consideration of site-specific objectives that review the appropriateness of the water quality objectives. This review would take place before requiring dischargers to meet new, more stringent effluent limitations, or change and improve treatment processes that may or may not actually impact or improve groundwater quality. As the State Water Board indicated in the Lompoc Order, where compliance with limitations could not be achieved by reasonable efforts, it was appropriate to review the water quality objective. (Lompoc Order at p. 6.) The Water Quality Control Plan for the Sacramento and San Joaquin River Basins applies groundwater objectives in general to all groundwaters. There are no site-specific factors

taken into consideration as currently applied. In order to account for local variability and site-specific considerations, we recommend that the State Water Board establish a streamlined process that allows for the evaluation of water quality objectives for such basins to determine if they reasonably apply to the groundwater in question, or if different water quality objectives would be more appropriate for the groundwater in question. For example, water quality objectives at the point of use could be determined by risk-based calculations for the designated agricultural or municipal uses.

CVCWA appreciates the opportunity to provide comments on this issue. Please contact me directly if you have questions regarding the comments contained here.

Sincerely,



Debbie Webster, Executive Officer
Central Valley Clean Water Association

cc: Pamela Creedon, CVRWQCB
Jim Colston, Tri-TAC
Bobbi Larson, CASA