

October 5, 2005

Ms. Diane Beaulaurier
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114

Dear Ms. Beaulaurier:

Subject: Comments on the Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins for the Control of Diazinon and Chlorpyrifos Runoff into the Lower San Joaquin River - Public Review Draft Staff Report, dated August 2005

The Sacramento Regional County Sanitation District (SRCSD) has reviewed the Public Review Draft Staff Report (August 2005) for *Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins for the Control of Diazinon and Chlorpyrifos Runoff into the Lower San Joaquin River*. Although SRCSD is not a discharger to the Lower San Joaquin River and is therefore not directly impacted by the proposed amendments to the Basin Plan, SRCSD anticipates that the forthcoming TMDL and Basin Plan Amendment for Diazinon and Chlorpyrifos for the Sacramento and San Joaquin Delta will mirror the Amendments proposed in this TMDL. As such, SRCSD submits these comments on this staff report and in advance of the Regional Board's preparation of the Diazinon-Chlorpyrifos Delta TMDL to ensure consistency between the two TMDLs. SRCSD's comments are consistent with the format as suggested by the Regional Board.

Comment #1 – Proposed Amendment Should Not Use Diazinon Target in lieu of Adopting a Diazinon Water Quality Objective

SRCSD is concerned that the staff proposal recommends adoption of a diazinon "target" water column concentration instead of adopting a water quality objective. SRCSD is of the position that the use of a target circumvents the Regional Board's responsibility to adopt water quality objectives pursuant to the California Water Code, and in particular, pursuant to sections 13241 and 13242 of the California Water Code. In reality, targets end up being used in permits and other regulatory requirements to establish effluent and receiving water limits. As a result of the approval of diazinon targets, de facto water quality objectives are automatically created without the burden of following the law for adoption of such objectives. In fact, the proposed language for insertion to Chapter IV, Implementation page 36.01 would clearly require NPDES permit writers and others to use the targets to interpret the narrative toxicity objective. SRCSD does not support this approach and requests that the proposed amendment be modified to adopt an appropriate diazinon concentration as an objective pursuant to sections 13241 and 13242 and section 13000 of the California Water Code.

Comment #2 – Regional Board should not prepare a TMDL for Diazinon if it is unclear that Impairment Exists

Based on the discussion within the Staff Report, it is clear that the Regional Board staff is unsure at this time as to what is an appropriate numeric water quality objective for diazinon. If the Regional Board is unsure of the appropriate numeric value for a diazinon water quality objective, the question exists whether the Regional Board knows that the San Joaquin River remains impaired for Diazinon and therefore is in need of a TMDL. Since the San Joaquin River was originally listed as impaired, there has been much discussion before the Regional Board and at U.S. EPA as to what are the appropriate, scientifically defensible maximum and continuous concentrations of diazinon in water. This open debate clearly shows that the diazinon numeric water column concentration that is deemed to be reasonably protective of aquatic life uses should go through the water quality objectives process instead of being adopted as a target. Until there is an adopted water quality objective, or greater certainty regarding the appropriate diazinon water column concentration to be considered as an objective, the Regional Board cannot properly evaluate the available, recent data to determine if there is ongoing impairment subject to the TMDL provisions of the Clean Water Act.

Comment #3 – The Proposed Basin Plan Amendment provides no certainty to permitted dischargers.

Based on the language in general and the specific language on page 62 of the Public Review Draft Staff Report, the proposed Basin Plan Amendment provides no certainty as to the regulatory impact of the application of adopted water quality objectives for diazinon. The Public Review Draft contains the statement that if new information indicates that a numeric objective is not protective enough that “the Regional Board could still apply the narrative objectives to ensure protection of beneficial uses while it went through the process of amending the numeric objective.” This statement undermines the intent and purpose of adopting numeric water quality objectives into the Basin Plan. According to this statement, the Regional Board can ignore an adopted numeric objective whenever new information is published (regardless of the credibility of the information) that suggests that the criteria should be lower.

If this statement were true, then there would be no need to have adopted numeric objectives. SRCSD does not support the legality of the statement as made in the Public Review Draft. It is an established legal principle that more specific provisions in statute or regulation supersede more general provisions. In this case, a numeric water quality objective is more specific than a narrative objective and therefore it would supersede a general narrative objective. Thus, an adopted numeric water quality objective for diazinon would be the applicable objective until the objective was properly amended according to the law.

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Comment #4 – The Public Review Draft assumes that the non-agricultural use bans for chlorpyrifos and diazinon will allow municipal wastewater dischargers to comply with the proposed Waste Load Allocations. However, the Public Review Draft does not look at any municipal wastewater data to determine if this statement is true.

Municipalities may not be able to meet the proposed waste load allocations for diazinon and chlorpyrifos even though these pesticides are no longer available for urban uses. If unable to meet such allocations and subsequent effluent limits derived from these WLAs, municipal wastewater treatment plants will be subject to mandatory minimum penalties and further regulatory action. The Public Review Draft provides no analysis of the ability of wastewater agencies to meet the proposed WLAs or the potential costs to come into compliance if not able to meet the WLAs. Section 5.2 presumes that NPDES permittees can meet the allocations and therefore will not be required to implement additional management measures or treatment technologies. The Regional Board should document its evaluation of available diazinon and chlorpyrifos data from municipal wastewater dischargers to the San Joaquin River to illustrate that this assumption is correct.

Based on our comments above, SRCSD encourages the Regional Board to eliminate diazinon from the TMDL until a proper water quality objective can be adopted, or to propose an appropriate diazinon water quality objective. In addition, SRCSD encourages the Regional Board to revise the Public Review Draft and the Basin Plan language to clearly show that an adopted numeric objective will supersede a narrative objective. Finally, it is requested that the Public Review Draft be amended to show the impact that the proposed WLAs have on municipal wastewater dischargers based on an evaluation of effluent data.

Thank you for the opportunity to comment.

Sincerely,

Wendell Kido
District Manager

cc: Terrie Mitchell, SRCSD
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