



CVCWA Central Valley Clean Water Association

Representing Over Fifty Wastewater Agencies

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November 28, 2006

Song Her
Clerk to the Board
Executive Office
State Water Resources Control Board
P.O. Box 100
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commentletters@waterboards.ca.gov

Subject: Comment Letter - Sediment Quality Objectives for Enclosed Bays and Estuaries of California, CEQA Scoping Meeting Information Document

Dear Ms. Her:

The Central Valley Clean Water Association (CVCWA) appreciates the opportunity to comment on the *CEQA Scoping Meeting Information Document for the Development of Sediment Quality Objectives (SQOs) for Enclosed Bays and Estuaries*. CVCWA is an association of fifty six local public agencies that provide wastewater collection, treatment and water recycling services throughout the Central Valley region, including the Delta Region. On behalf of our Delta members, we submit the following comments on the *CEQA Scoping Information Document*.

CVCWA would like to acknowledge the sound scientific process that the State Water Resources Control Board (State Board) has developed to address this very complex issue. CVCWA supports the State Board's structure of utilizing a Scientific Steering Committee to address technical issues and a separate stakeholder Advisory Committee to address sediment quality objective specific to the Delta. We encourage the State Board to maintain this structure and process as the policy continues to advance through the State Board's regulatory process.

Our comments are presented below in the order that they appear in the text of the *CEQA Scoping Information Document*. We appreciate the time and consideration of your staff and look forward to working with State Board staff and other stakeholders as this process moves forward.

Section 2.2 To What Waters Should the SQOs be Applied?

CVCWA is very concerned that SQOs could ultimately be developed for estuaries without the benefit of adequate data and information. The State needs time to collect the appropriate data for estuaries in general and the Delta in particular. Until such information is collected, the State Board should not embark on the development of SQOs for estuarine habitats. CVCWA is not opposed to alternative #3 per se, however, CVCWA is concerned as to the impact that data collection efforts may have on POTWs that discharge into the Delta and the impact of interim measures. Until the interim measures are clearly identified and understood by CVCWA and its impact on its members, it is difficult to support a preferred alternative.

Section 2.6 What Beneficial uses Should be Specifically Addressed within the Proposed SQO Plan?

CVCWA strongly supports the State Board's preferred approach to limit the application of SQOs to beneficial uses that are linked to specific receptors such as marine and estuarine habitat. CVCWA would not support an approach that categorically links SQOs to all beneficial uses.

Section 2.10 What Lines of Evidence are Needed to Assess Sediment Quality?

CVCWA strongly supports Alternative 3, which would base the SQO policy on the application of Multiple Lines of Evidence. To properly develop and apply SQOs, multiple lines of evidence must be used due to the complex nature of sediment.

Section 2.11 What Type of Objectives Should be Utilized in the Proposed Policy?

CVCWA understands and supports the need to utilize narrative objectives for sediment. However, narrative SQOs must be implemented using the multiple lines of evidence identified in the policy. The narrative SQOs must also be written in a manner that makes clear that use of multiple lines of evidence is required and the State Board must provide direction on the use of the multiple lines of evidence to minimize confusion as to their application and interpretation. The State Board must avoid crafting narrative objectives that are vague and easily interpreted without the proper data and information.

Section 2.19 What are Some of the Interim Tools that Could be Applied to the Delta and Other Estuaries?

CVCWA is opposed to the staff's recommended alternative for using sediment toxicity and chemistry to implement a narrative SQO for the Delta. Instead, CVCWA believes that the application of narrative SQOs to the Delta and other estuaries should be deferred until the data is collected in Phase II and the technical team has time to develop appropriate tools. The premature application of narrative SQOs in the absence of all necessary multiple lines of evidence may result in regulations and permit limits that are over or under restrictive for the situation at hand. At most, the State Board should consider interim tools that involve data collection and tool validation if there is clearly a connection between a discharge and a high level of impairment. Unless there is a strong degree of confidence between the connection and impairment, interim tools should not be utilized.

Section 2.20 Should Interim Tools Sunset in SQO Plan?

As stated above, CVCWA does not support the use of interim tools until the State has the opportunity to collect the necessary data and develop the appropriate tools. As such, CVCWA supports language for the narrative objective that links application of the objective to the completion of Phase II. Unless Phase II is completed, the narrative SQO would not apply. This will provide the State with the appropriate incentive to move forward. Should the State determine that it is absolutely necessary to adopt interim tools, CVCWA supports a clear sunset clause of the narrative SQO should phase II not be completed in a timely manner

Section 2.21 How Could the SQOs be Applied?

The *CEQA Informational Document* appears to be missing additional text regarding the application of SQOs. In general, CVCWA supports the application of SQOs to the Delta after a robust data set has been developed and the appropriate tools have been developed.

Section 2.22 How Should an Exceedance of the SQOs be Defined?

CVCWA supports the State Board's preferred alternative to define SQOs through the use of magnitude and extent, which is appropriate when addressing sediment.

Section 2.24 Could the SQOs be Applied within National Pollutant Discharge Elimination System (NPDES) Permits?

CVCWA is not opposed to applying narrative SQOs as receiving water limits in NPDES permits. This is a better alternative than trying to calculate effluent limits. However, the receiving water limit must include language that requires a clear showing that the NPDES discharge is causing the violation of the SQO before the NPDES permit holder can be deemed to have violated the receiving water limit. More importantly, narrative SQOs should not be applied in NPDES permits for dischargers to estuaries (i.e. the Delta) until after Phase II is completed. It would be unfair to include receiving water limits in these permits until the data is collected and the appropriate tools are developed.

Section 2.25 Should the Plan Include Follow-up Actions for Permittees When an Exceedance Occurs?

Before including follow-up actions as part of the Implementation Plan, the follow up actions must be clearly developed and appropriate to the issue of SQOs. Also, there must be a clear link between the exceedance and the NPDES permit holder before a NPDES permit holder is held responsible for follow up actions. There are many different types of discharges to the Delta that may affect sediment quality and NPDES permittees should not be responsible for exceedances that are caused by others.

Preliminary Draft Plan, General Comment

The Preliminary Draft Plan must be revised to better reflect the two phases associated with the implementation of SQOs. As it stands, the Draft Plan applies equally to bays and estuaries. Until data is collected and appropriate tools are developed, the implementation provisions should not apply to estuaries.

Preliminary Draft Plan, Section I.C., Review of Plan

This section needs to be amended to include a sunset provision that is linked to the completion of Phase II for estuaries.

Preliminary Draft Plan, Section II.E., Discharges

The language of this section should be amended to better clarify the State Board's intent. We recommend that the section be revised as follows:

"The Implementation Provisions of this Plan are intended to apply initially to direct discharges into bays and estuaries and not discharges that occur upstream."

Preliminary Draft Plan, Section IV.A. & IV.B., Aquatic Life & Human Health

CVCWA suggests that the State Board re-phrase the sediment quality objectives as follows:

"This narrative objective shall only be interpreted using MLOE as described in Section V of the policy."

And,

"This narrative objective shall only be interpreted as described in Section VI of the policy."

Preliminary Draft Plan, Section V.A., General Intent

To be consistent with the change suggested above, the language in section A must also be amended to use the term "interpreted" versus "implemented". CVCWA believes that in fact the implementation policy is for interpreting the narrative objective, versus implementing a narrative objective. The word interpreted is consistent with the State's accepted practices and policies with regard to the interpretation of narrative objectives.

Preliminary Draft Plan, Section V.C., Water Bodies

As previously expressed, CVCWA is opposed to the application of this policy to bays and estuaries where data is not presently available to develop and validate the appropriate tools to apply the multiple lines of evidence. CVCWA does not support the inclusion of language that would allow the interpretation of the narrative SQOs with only chemistry and toxicity lines of evidence. To clarify the application of this policy, CVCWA recommends that sub-section V.C.2. be revised as follows:

"For all other bays and estuaries, this Policy should not apply until the appropriate benthic tools are available and validated."

Preliminary Draft Plan Sections, V.D. & V.E., Field Procedures & Laboratory Testing

These two sections should be combined and identified as data requirements. The section should then clearly state that only data meeting these requirements shall be used to interpret the narrative SQOs.

Preliminary Draft Plan, Section V.J., Missing Benthic LOE

CVCWA opposes the inclusion of section J, which allows for the interpretation of the narrative SQOs with only two lines of evidence. We recommend that section J either be deleted or amended as follows:

"In waters where one line of evidence is missing, the narrative SQOs shall not apply."

Preliminary Draft Plan, Program of Implementation, Section VII., General

As stated previously, CVCWA does not support that application of the Program of Implementation to estuaries until the appropriate interpretation tools have been developed. Thus, the program of Implementation should be revised to demarcate between its applications to dischargers that discharge to the water bodies identified in Section V.C.1. and discharges to water bodies not identified. After Phase II is completed, CVCWA supports the application of the program of implementation with the following suggested changes identified below.

Preliminary Draft Plan, Program of Implementation, Section VII.A., Receiving Water Limits

CVCWA supports the implementation of SQOs as receiving water limits when the Regional Board can demonstrate that there is reasonable potential that the discharge of a bio-accumulative pollutant may cause an exceedance of an applicable SQO or SQOs. There are many different types of discharges to the Delta that may affect sediment quality and NPDES permittees should not be responsible for exceedances caused by other contributions. It is important to note that the State's development and adoption of SQOs is being done pursuant to the California Water Code and that SQOs are not water quality standards established under section 303 of the federal Clean Water Act. Because the State's SQOs are not water quality standards established under section 303 of the federal CWA, the State can implement the standards through receiving water limits in NPDES permits versus using effluent limits.

However, CVCWA is concerned with the current standard contained in the receiving water language that ties implementation of the standard to the Regional Board's "belief." The Regional Board's belief is not an adequate evidentiary basis for a permit limitation and for new monitoring requirements. Instead of relying on the Regional Board's belief, the Regional Board must be required to demonstrate that reasonable potential exists. With regard to the monitoring language contained in section VII.A., we recommend that it be removed from this section as it is address below in section B.

To clarify when the receiving water limit would be applicable, we suggest the following language:

"The SQOs shall be implemented as receiving water limits in NPDES permits where the Regional Board has demonstrated that there is reasonable potential for the discharge to cause an exceedance of an applicable SQO or SQOs."

Preliminary Draft Plan, Program of Implementation, Section VII.B., Sediment Monitoring

CVCWA is concerned that the Sediment Monitoring language in section VII.B. implies that the NPDES permit holders will be solely responsible for the collection of adequate data to develop appropriate tools for interpreting SQOs. CVCWA members are not opposed to monitoring sediment when there is direct connection between an agency's discharge and an exceedance of a SQO to determine if the discharge violates receiving water limits. However, CVCWA believes that it is the State's responsibility to collect adequate data for the development of appropriate tools. The monitoring program described in Section VII.B. appears to apply most appropriately to water bodies where the interpretation tools have been adequately developed. Until that occurs for other water bodies, these provisions should not apply. To be consistent with our comments above, CVCWA recommends that VII.B.2.a. be amended as follows:

"Where the State Water Board or Regional Water Boards can demonstrate that there is reasonable potential that the discharge of a bio-accumulative pollutant may cause an exceedance of an applicable SQO or SQOs, sediment quality monitoring shall be required as appropriate. However, the State Water Board or a Regional Water Board may exempt low volume discharges from this monitoring requirement."

With regard to the Monitoring and Scheduling Frequency, we recommend that the section VII.B.6.a. be amended as follows:

"Permittees shall, at a minimum, monitor sediment quality as described in this Plan at least once per permit cycle if the Regional Board has demonstrated that the discharge has reasonable potential to cause an exceedance of a SQO."

Preliminary Draft Plan, Program of Implementation, Section VII.C.4.b., Sources Identification and Management Actions

To clarify the State Board's intent regarding the management actions for multiple sources, we recommend that section VII.C.4.b. be amended as follows:

"If the Regional Board determines that multiple sources are responsible for discharging the stressor pollutant that causes an exceedance of the SQO, the Regional Board shall require the sources to take all necessary and appropriate steps to address the exceedance(s). If the SQO exceedances are deemed to cause impairment to the water body in accordance with the State's TMDL listing policy, then the Regional Board may be required to adopt a TMDL to ensure attainment of the sediment standard."

Preliminary Draft Plan, Program of Implementation, Section VII.D., Existing Management Actions


CVCWA encourages the State Board to revise this language in order to encourage Regional Boards to re-open existing TMDLs and review existing Basin Plan provisions to ensure that they are consistent with the multiple lines of evidence approach contained in this policy.

Overall, CVCWA appreciates the time and effort that the State has taken to put forward a scientifically sound process for addressing sediment quality objectives. We support this approach. However, CVCWA remains concerned that as drafted the Draft Policy and the Draft Program of Implementation would undermine this sound process by requiring application of the policy to estuaries where multiple lines of evidence and the

tools to interpret the multiple lines of evidence are not yet available. As such, CVCWA recommends that the documents be amended to better articulate the phased approach that is currently being implemented by the State Water Board.

We appreciate the opportunity to comment and look forward to continuing our participation on the Delta Stakeholder Advisory Group through our CVCWA representatives, Ava Langston-Kenney and Tess Dunham. If you have any questions regarding our comments, please do not hesitate to contact me at (530) 886-4911.

Sincerely,



Warren Tellefson
Executive Officer

Cc: Permitting Committee

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