

Recent Legal and Permitting Issues

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Recent Tracy Case

- CSPA and Tracy appealed Tracy Permit
- State Board issued Order in CSPA appeal and Tracy appealed (and CVCWA Intervened) that Order and the South Delta Salinity Objectives in Delta Plan
- New decision from Superior Court:
 - Inadequate 13241 analysis on objectives
 - Inadequate Implementation Plan as to POTWs
 - Prohibited from using objectives in POTW permits until reissued correctly

Manteca Case

- Manteca and CSPA appealed Permit
- State Board denied Manteca's request for stay
- Superior Court granted Manteca's request for stay
- Permit appeals dismissed by operation of law (i.e., no action by State Board)
- Manteca appealed and requested stay

Vacaville Case

- 2001 State Board Order
- Adverse State Court Order, now on appeal
- Issues:
 - Use designations under Sources of Drinking Water Policy
 - Use designations under Tributary Rule
 - Criteria incorporated by reference from Drinking Water regs (e.g., MCLs)

El Dorado Irrigation District

- CSPA appealed, State Board dismissed
- CSPA appealed to Superior Court
- Superior Court Statement of Decision
 - Antidegradation (RWQCB action okay)
 - Aluminum (RWQCB action not okay)
 - Bis(2) (RWQCB action okay)
 - Hardness (RWQCB action not okay)
 - Monitoring for pH and temperature (up to RWQCB)

SSO WDR Cases

- Most cases settle, but ...
- Recent citizen suit alleged violation of SSO WDR and municipal ordinances
- Both WDR and ordinance claims were dismissed by federal court
- Remaining claims going to trial are on unpermitted discharges to waters of the U.S.

Land Discharge (WDR) Permit Issues

- Title 27 analysis (i.e., Lodi Order)
 - CVCWA challenge pending
- Salt and Nutrient Management Plans
- Time Schedules for application of groundwater limitations

Title 27

- Discharges of domestic sewage and treated effluent
 - Must meet pre-conditions
- Treatment or storage facilities
 - No pre-conditions
 - Must be part of treatment process
- Wastewater
 - Must meet pre-conditions
- Reuse
 - Must be treated or salvaged from waste

Salt and Nutrient Management Plans

- Usually in recycled water permits
- Should be consistent with State Board Reuse Policy
- CV-Salts working to address

Time Schedules

- Allowed under Water Code § 13263
- Not required to comply with groundwater limits immediately
- May be delayed until adequate monitoring data available
- May be delayed until BPTC studies are completed

NPDES Permit Issues

- Antidegradation analysis
- Salinity limits
- State law provisions
- Other issues
 - Metals based on Hardness
 - Aluminum
 - UV Disinfection operating requirements
 - Chronic Toxicity triggers/limits

Salinity Limits

- In the Delta
 - How and where to determine reasonable potential
- Out of the Delta
 - Applicable criteria
 - Site specific studies
 - Coordination with CV Salts
 - Performance based limits

Antidegradation Issues

- When is a complete antidegradation analysis required?
 - Lower existing water quality or a change in circumstances
 - How and where to determine reasonable potential
- What is the baseline for analysis?
 - Existing discharge or No discharge
- What is the threshold for significance?
 - Ten percent or ad hoc determination

State Law Only Provisions

- If state law only provisions are in your NPDES permit, they are potentially subject to EPA and citizen enforcement under the CWA
- Work with RWQCB to clearly delineate which are state law only
- Ideally, have two separate permits –
1) NPDES, and 2) WDRs (e.g., Tracy)

Other Issues

- Metals based on Hardness
 - New fact sheet language
 - Better explanation as to curve method
- Aluminum
 - Applicable site specific studies
- UV Disinfection operating requirements
 - Dictating manner of compliance
- Chronic Toxicity triggers/limits
 - Narrative limit
 - Draft WET Policy