



CVCWA

Central Valley Clean Water Association

Representing Over Fifty Wastewater Agencies

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Via Electronic Mail Only

October 10, 2016

Tessa Fojut
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

RE: Draft Basin Plan Amendments for Pyrethroid Pesticides

Dear Ms. Fojut:

The Central Valley Clean Water Association (CVCWA) appreciates the opportunity to comment on the proposed Basin Plan Amendments for Pyrethroid Pesticides to the Water Quality Control Plan for the Sacramento-San Joaquin River Basins (Draft BPA). CVCWA is a non-profit association of public agencies located within the Central Valley region that provide wastewater collection, treatment, and water recycling services to millions of Central Valley residents and businesses. We approach these matters with the perspective of balancing environmental and economic interests consistent with state and federal law. In this letter, we provide comments regarding the Draft BPA, and its potential impact on Central Valley publically-owned treatment works (POTWs).

As a preliminary matter, we would like to thank you for the open and transparent stakeholder process that staff at the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has employed with regard to the development of the Draft BPA. We also appreciate the opportunities that have been provided to comment on the Draft BPA at different stages in its development. The comments provided here are in response to the most recent request for such comments on the latest Draft BPA at stakeholder meetings on September 26, 2016, and October 5, 2016.

In addition to these comments, CVCWA will submit additional, more detailed comments in response to the Draft Staff Report when it is made available.

I. Use of Triggers at End of the Pipe

At the end of the meeting on October 5, 2016, Ms. Chilcott explained that the triggers would be applied to POTW effluent at the end of the pipe. This is of considerable concern to CVCWA on behalf of our members. By applying the trigger to effluent directly, consideration of mixing zones and/or dilution that may otherwise be available in the receiving water is eliminated. Further, it is our understanding that proposed water quality triggers will be used to require implementation of management practices and/or monitoring. In other words, exceedances of triggers are of concern because they may mean that there are impacts to aquatic life beneficial uses, which apply in the receiving water. In light of the fact that concerns are related to potential impacts to beneficial uses in receiving water, CVCWA believes it is appropriate for triggers to apply in the receiving water – not at the end of the pipe. Moreover, an exceedance of a trigger in effluent does not mean that the trigger would be exceeded in the receiving water immediately downstream of the discharge. Yet, POTWs would be required to expend resources on implementing management practices and monitoring, even though there might be no actual impact on aquatic life beneficial uses. Accordingly, CVCWA recommends that the Draft BPA be revised to apply the trigger to the receiving water and not to the effluent.

II. 1st vs. 5th Percentile

CVCWA does not believe that there is reliable data and information available to support the use of the 1st percentile at this time. Rather, it is more appropriate for the Central Valley Water Board to start with the 5th percentile, and then, as additional monitoring data and information is obtained, to evaluate whether the 5th percentile is appropriately protective. When the Central Valley Water Board reviews the triggers as proposed in the Draft BPA, it can at that time determine if it is necessary to use the 1st percentile or another appropriate value as a trigger. Notably, it is always easier for the Central Valley Water Board to adopt a more stringent standard later, as compared to adopting a less stringent standard in the future.

III. Draft BPA Language

With respect to the Draft BPA language, CVCWA appreciates staff's efforts to propose a reasonable, phased approach. In general, CVCWA supports the use of triggers versus the adoption of water quality objectives. CVCWA further supports triggers that are based on the bioavailable fraction as compared to the total concentration of a pyrethroid. However, it is essential that the Draft BPA clearly articulate how the triggers should – and perhaps more importantly, should *not* – be used. Specific comments on the Draft BPA language are provided below:

- The discharge prohibition should not apply while dischargers are preparing, submitting, modifying, and/or waiting for the approval of management plans. During this time period before the Central Valley Water Board approves a management plan, dischargers need to be protected from otherwise being considered in violation of the discharge prohibition. For POTWs subject to NPDES permits, this is essential. Discharge prohibitions are included in NPDES permits, and the violation of a discharge prohibition is considered a permit violation. While in this instance such a violation would not be subject to mandatory minimum penalties, it could expose a discharger to third-party liability for failing to comply with its permit. Additionally, the discharge prohibition 6B on page 12 is written in such a way that the POTW will be in violation of this conditional prohibition, at least the first time

it exceeds a trigger, unless it is proactively implementing a management plan. CVCWA recommends that the language be changed to allow submittal of the management plan after exceeding a trigger without a violation of the conditional prohibition:

“Municipal or domestic wastewater discharges with pyrethroid concentrations in excess of applicable triggers are prohibited unless the discharger submits a management plan within 6 months of the first exceedance and is implementing a management plan.”

- Finally, as with the monitoring section, a POTW should be allowed to discontinue implementing management practices in a manner similar to that in the monitoring plan: when it can show that the specific pesticide(s) is/are no longer in the effluent at concentrations with the potential to cause or contribute to exceedances of the applicable water quality objectives. (See page 19).
- On Table IV-Z and in footnote 2, references to “criterion” should be changed to “trigger.” As has been discussed on several occasions, CVCWA continues to be concerned that the “trigger” value could be considered a criterion for use in interpreting the narrative toxicity objective. While we understand that this is not the Central Valley Water Board staff’s intent, it is critical that the Draft BPA make it abundantly clear that a trigger is not a criterion, and that it is inappropriate to use a trigger in determining reasonable potential. Similarly, in paragraph 5 on page 7, other terminology such as “regulations” may be more appropriate than “standards.”
- On page 6, under *U.S. Environmental Protection Agency*, paragraph 1 needs to be substantially revised to simply state that there should be internal coordination to protect water quality. As currently drafted, CVCWA is concerned that it suggests POTWs’ discharges need to have a water quality-based effluent limitation for pyrethroid pesticides. Understanding the fate of pesticides passing through wastewater treatment plants (WWTPs) and the capability of WWTPs to remove pesticides prior to discharges should be part of the pesticide registration process. Although page 14 includes a management practice encouraging these agencies “to accommodate urban water quality concerns within their pesticide registration process,” this also needs to be incorporated as a recommendation to the Department of Pesticide Regulation (DPR) and the U.S. Environmental Protection Agency.
- On page 8, paragraph 3, the language needs to be revised to state that the triggers represent maximum allowable concentrations in the receiving waters – not in effluent. As expressed above, CVCWA is concerned that the triggers will be applied directly to effluent, which is not necessary or appropriate. Further, with respect to paragraph 3, CVCWA is concerned that this would allow the Central Valley Water Board to require further reductions without a proper, public process. As drafted, the Water Board is given discretion to lower the maximum allowable concentration, but this authority is not qualified by stating that it would need to happen within a public process to allow public review and comment prior to implementing any reduction in the maximum allowable concentration. Finally, the triggers in this section read as an instantaneous maximum. The Draft BPA should reference the appropriate timeframe for these concentrations.

- On page 12, the Draft BPA discusses how the Conditional Prohibition will be applied to POTWs. As mentioned above, CVCWA is concerned with application of the trigger to effluent rather than receiving water. This language needs to be substantially revised. We provide the following proposed language for consideration:

“For municipal or domestic wastewater dischargers, the discharger shall implement a management plan to reduce pyrethroid concentrations in the discharge if the receiving water below the point of discharge exceeds the pyrethroid triggers identified in Table IV-Z. Such a determination shall be made at the edge of any approved mixing zone for aquatic life beneficial uses.”

- Further, with respect to the language referencing water quality-based effluent limitations and reasonable potential, we recommend that the Draft BPA be revised to more clearly state that the triggers are not criteria, and are not to be used to interpret the narrative toxicity objective. Specifically, we propose the following language:

“The pyrethroid triggers are intended to be used as a level that initiates actions on the part of the discharger. However, the pyrethroid triggers are not criteria for interpreting the narrative toxicity objective, and shall not be used to determine reasonable potential or as a water quality-based effluent limitation.”

- On page 13, the last paragraph under 6.b. requires POTWs to identify additional actions to reduce pyrethroid discharges, or a provide justification for why current practices will result in achieving the applicable triggers within a reasonable timeframe. CVCWA is concerned that POTWs may not be able to meet this condition. The initial study has not shown that there are reasonable and feasible controls within the purview of a POTW to meet triggers within a reasonable timeframe. In fact, the most effective measure identified through this process is through product registration. CVCWA recommends that the language be modified to require additional actions to be taken to reduce pyrethroid discharges, if reasonable and feasible actions are available.
- On page 16, the monitoring language needs to be revised to clarify that it is referencing trigger concentrations which are freely dissolved concentrations.
- On page 19, the Draft BPA proposes to require baseline monitoring of pyrethroids by POTWs. CVCWA is concerned that the monitoring requirements would require monitoring of the effluent rather than the receiving water. As stated previously, the triggers should not apply to effluent, and thus effluent monitoring should not be required. CVCWA is also concerned that the monitoring provisions suggest that the triggers should be used to determine compliance with the narrative toxicity water quality objective. This is in direct conflict with the intent of the trigger, which is to “trigger” the need for management practices – not to create reasonable potential.

IV. Conclusion

In summary, CVCWA encourages the Central Valley Water Board staff to consider the potential impact of recommending triggers at the 1st percentile versus the 5th percentile. As we

have commented previously, the Central Valley Water Board's charge is to provide for the reasonable protection of beneficial uses. Adopting a trigger at the 1st percentile based on *Hyalella azteca* water column toxicity testing goes beyond reasonable protection and is overly conservative. Further, CVCWA recommends that the Draft BPA be substantially revised to clarify application of the triggers to the receiving water – not effluent. It is equally important that the Draft BPA be revised to clearly indicate that the triggers shall not be used to interpret the narrative toxicity objective, and thus shall not be used to determine reasonable potential and calculate water quality-based effluent limits.

We appreciate your consideration of these comments. If you have any questions or if CVCWA can be of further assistance, please contact me at (530) 268-1338 or eeofficer@cvcwa.org.

Sincerely,



Debbie Webster,
Executive Officer