06/21/06 BMtg Item
Chlorine Policy
Deadline: June 5, 2006

Association of California Water Agencies

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State Water Resources Control Board
Executive Office
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Sacramento, CA 95814
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Subject: Comments on the California State Water Resources Control Board (SWRCB) Proposed Total Residual Chlorine and Chlorine-Produced Oxidants Policy

Dear Ms. Her:

The Association of California Water Agencies appreciates this opportunity to provide our comments on the draft "Total Residual Chlorine and Chlorine-Produced Oxidants Policy" (Chlorine Policy) released for stakeholder comment in April 2006.

ACWA represents over 450 public water agencies in California that collectively supply over 90% of the water delivered in California for domestic, agricultural and industrial uses. ACWA agencies include Publicly Owned Treatment Works (POTWs) that discharge wastewater or operate recycled water facilities to provide additional beneficial uses for "waste" water, utilities that manage and discharge treated stormwater, and also many agencies that provide drinking water for residents and business throughout the state. In most cases, chlorine is used to treat these waters to protect public health. ACWA agencies are integrally involved in all aspects of surface water and groundwater management statewide to ensure that water supply needs are adequately addressed and acceptable surface water and groundwater quality is maintained.

Background Information

As we described in our July 8, 2005 comment letter concerning the Proposed Draft Functional Equivalent Document (FED) for the Chlorine Policy, many ACWA member agencies use chlorine as a critical water treatment tool to ensure disinfection of water supplies and water conveyance systems to protect public health. These agencies occasionally have to discharge treated (chlorinated) drinking water into public storm water collection systems or other surface drainage systems as a part of routine maintenance (such as line flushing, and hydrostatic testing), and sometimes on an emergency basis due to water line ruptures or accidental discharges at water treatment facilities.

At the September 2005 Stakeholder Meetings held in Oakland and Los Angeles, SWRCB staff, SWRCB Board Members and stakeholders discussed the first draft of the Chlorine Policy. Participants at the Los Angeles meeting heard a presentation by Metropolitan Water District of

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Southern California (MWD) describing the technology limitations that made it infeasible for potable water discharges to comply with the proposed Chlorine Policy numeric effluent limits. Both the State Water Board members and the SWRCB staff indicated they understood the issues facing drinking water utilities and staff would provide language in the revised Chlorine Policy and Substitute Environmental Document (SED) excluding potable water discharges from the Chlorine Policy. They indicated that these types of discharges would continue to be regulated under the Municipal Separate Storm Sewer System (MS4) Permits and Regional Water Quality Control Board (RWQCB) General Permits, which would have been acceptable to the groups participating in the meeting.

ACWA and other drinking water agencies provided comments to the SWRCB staff to help ensure that the language included in the second draft of the Chlorine Policy accomplished what had been promised by the SWRCB staff at the September 29, 2005 Stakeholder Meeting.

When the April 2006 draft Chlorine Policy was released for public comment, ACWA and other stakeholders were troubled to read that the new draft would unfortunately capture almost all drinking water dischargers. The new draft language would include discharges from drinking water utilities if operating under an NPDES permit (such as the various RWQCB General Permits for Potable Water Discharges or De Minimus Discharges). The SWRCB staff reiterated that drinking water utilities were not intended to be part of the policy and gave evidence of their intention by a lack of cost estimates for drinking water utilities to comply with the Chlorine Policy in the Economic Analysis.

Since the April draft was released, ACWA has been working with MWD and other stakeholders to develop compromise language that would allow potable water agencies to continue to operate under their current MS4 and NPDES permits and not be subject to the effluent limits in the Chlorine Policy. Unfortunately as of the date of this letter language has not been offered by SWRCB staff to address this issue. While we have been working diligently to find a solution, ACWA is concerned over conflicting comments made by SWRCB staff indicating that language would be inserted requiring potable water dischargers to prove to their respective Regional Boards they could not feasibly adhere to the Chlorine Policy when staff and the SWRCB Board has already acknowledged drinking water utilities were never supposed to be included under the Policy's requirements. In addition, the original intent of the Chlorine Policy was to create a consistent chlorine policy for California, which would not result from deferring feasibility decisions to the Regional Boards.

ACWA is extremely concerned by the proposed draft Chlorine Policy since drinking water utilities are currently included under its restrictions and simply cannot monitor dechlorination to the level that is required in the policy document. Drinking water utilities do not have stationary treatment facilities and must dechlorinate in the field using Best Management Practices (BMPs) and Best Available Technology Economically Achievable (BAT). There is no field monitoring equipment available that will detect total residual chlorine to the proposed Chlorine Policy dechlorination level of 0.019 mg/L (1-hr average, freshwater). Additionally, there are no field devices that can ensure precise dechlorination to that stringent level. Water utilities, instead, are regulated under MS4 Permits and RWQCB General Permits to ensure that potable water discharges do not impact water quality. Under these permits, water utilities are required to implement Best Management Practices (BMPs) or meet numeric effluent limits that are based on BAT to reduce the discharge of total residual chlorine to the maximum extent practicable (MEP).

Consistent and effective BMPs and BATs have been developed for the state of California and are used by many water agencies throughout the state.

Conclusions and Recommendation

While ACWA appreciates the efforts made by the SWRCB staff to work with affected water utilities on compromise language that would be agreeable to all parties, we continue to have the following issues with the Chlorine Policy:

- Since the first draft of the Chlorine Policy was published, potable water dischargers were given assurances by SWRCB staff that they were not included in this policy and would instead be regulated by their existing permits.
- Potable water utilities were not included in the Economic Analysis for the Chlorine Policy; further demonstrating there was no intent to include drinking water activities.
- SWRCB staff has also agreed that regulation of potable water discharges through BMPs and BATs is the only feasible option.
- Even with the repeated acknowledgement that the SWRCB understood the infeasibility of drinking water utilities' ability to adhere to the policy, the draft Chlorine Policy released in April 2006 and proposed for adoption includes potable water dischargers.
- ACWA has been given only anecdotal evidence as to why, if the SWRCB does not intend to capture potable water under this policy, the State Board is not able to exempt them from the policy.
- While the Chlorine Policy is designed to create statewide consistency, the language is confusing and could result in several different interpretations if adopted as currently written.
- Lastly, ACWA also represents POTWs throughout the state and supports the concerns addressed in the California Association of Sanitation Agencies (CASA) comment letter.

If it is in fact determined that a categorical exemption for potable water discharges is not legally allowable, then language that otherwise accomplishes this stated goal must be developed. It is ACWA's belief that this can be resolved and we have been working to that end since the second draft of the Chlorine Policy was published in April 2006. However, the aforementioned issues will take time to resolve and as a result we urge the SWRCB not to take action on this policy during the Public Hearing on June 19th. We are committed to a collaborative process that will best serve the needs of our member agencies and statewide water quality.

If you have any questions regarding the comments presented in this letter, please contact Danielle Blacet, ACWA Regulatory Advocate at (916) 441-4545.

Sincerely,

Krista Clark
Director of Regulatory Affairs