SUMMARY OF THE PROPOSED CALIFORNIA TOXICS RULE

The state of California is currently without numeric water quality criteria for many priority toxic pollutants as required by the Clean Water Act (CWA). The CWA requires states to adopt numeric water quality criteria for toxic pollutants for which EPA has issued CWA Section 304(a) criteria guidance and whose presence could reasonably be expected to interfere with designated uses. The proposed California Toxics Rule includes numeric water quality criteria for priority toxic pollutants necessary to fulfill the requirements of CWA Section 303(c)(2)(B). The proposed Rule also contains an economic analysis associated with the implementation of the Rule which is not covered in this summary.

The CALFED parameters of concern included in the proposed rule are: cadmium, copper, mercury, selenium, zinc, chlordane, DDT, PCBs, and toxaphene. Criteria proposed in the Rule specific to the CALFED Water Quality Programs' parameters of concern are listed in the table attached hereto.

Why is CALFED's concern limited to these few parameters?

History of California's Water Quality Criteria

On April 11, 1991, California adopted two statewide water quality control plans (the Inland Surface Water Plan [ISWP] and the Enclosed Bay and Estuary Plan [EBEP]). In mid-April, 1991, California submitted the two statewide water quality control plans to the EPA for review and approval. In November, 1991, the EPA concluded its review wherein it approved certain aspects of the plans, but disapproved others. In December, 1992, California was included in the EPA's promulgation of the National Toxics Rule (NTR) for those programs not included in the April, 1991, adoption and for certain water bodies in California for which EPA had disapproved statewide plans. The provisions for California in the NTR together with the approved portions of California's ISWP and EBEP satisfied the requirements of CWA Section 303(c)(2)(B).

Shortly after the adoption of the ISWP and EBEP, several dischargers filed suit alleging that the state had not adopted the two plans in compliance with state law; namely, the Administrative Procedures Act, the California Environmental Quality Act, and Section 13241 of the Porter Cologne Act. A primary issue in the litigation was that the state did not consider economic impacts when adopting water quality objectives as required by Section 13241 of the Porter Cologne Act. As a result of the lawsuit, a California state court overturned the state's water quality control plans in 1994.

Since September, 1994, when the SWRCB rescinded the ISWP and EBEP due to the court decision, the requirements of CWA Section 303(c)(2)(B) have not been fully implemented in California. To meet the requirements of CWA Section 303(c)(2)(B), the proposed Rule establishes criteria for those priority toxicity pollutants which were previously covered by ISWP and EBEP and are not included in the NTR.

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