



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

JUN 20 2014

Samuel Unger, Executive Officer  
Los Angeles Regional Water Quality Control Board  
320 West 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013

Dear Mr. Unger:

The U.S. Environmental Protection Agency (the EPA) has reviewed your April 4, 2014 letter regarding the Los Angeles Regional Water Quality Control Board (LARWQCB) and the California State Water Resources Control Board (State Board) request for authority to provide compliance schedules consistent with the waste load allocations (WLAs) based on California Toxics Rule (CTR) criteria, pursuant to 303(c) of the Clean Water Act (CWA). This letter is to inform you that we are approving the authorization.

The approval is based on the State's Total Maximum Daily Load (TMDL) for Organochlorine (OC) Pesticides, Polychlorinated Biphenyls (PCBs), and Siltation in Calleguas Creek, its Tributaries, and Mugu Lagoon (CCW Toxics TMDL), and for the State's TMDL for metals and selenium in CCW (CCW Metals TMDL). The CCW Toxics TMDL was adopted by the LARWQCB as Resolution Number RB2005-10 on July 7, 2005, approved by the State Board as Resolution Number 2005-0068 on September 2, 2005, and approved by the Office of Administrative Law on January 20, 2006. The CCW Metals TMDL was adopted by the LARWQCB as Resolution Number RB2006-02 on June 8, 2006, approved by the State Board as Resolution Number 2006-0078 on October 25, 2006, and approved by the Office of Administrative Law on February 6, 2007. The EPA approved the CCW Toxics TMDL and the CCW Metals TMDL pursuant to CWA section 303(d)(2) on March 14, 2006 and March 26, 2007, respectively, and noted that our approvals did not include the TMDL implementation plans, as it is not required under current federal regulations for EPA to do so.

### **The Compliance Schedule Authorization Request**

The request is for authority pursuant to 303(c)(2) to provide compliance schedules consistent with Waste Load Allocations (WLAs), including interim WLAs, that are based on CTR criteria and the associated implementation schedule in the CCW Toxics and CCW Metals TMDLs, which will be included in National Pollutant Discharge Elimination System (NPDES) permits pursuant to the CWA section 301(b)(1)(c).

The request specifies that the LARWQCB may authorize compliance schedules in NPDES permits for up to 20 years for NPDES Dischargers (Hill Canyon, Simi Valley, Moorpark, Camerillo, and Camerosa POTWs) for Chlordane, 4,4-DDD, 4,4-DDE, 4,4-DDT, Dieldrin, PCBs, and Toxaphene, consistent with the Implementation Plan in the CCW Toxics TMDL. The request also specifies that the LARWQCB may authorize compliance schedules in NPDES permits for up to 10 years for NPDES Dischargers (Hill Canyon, Simi Valley, Moorpark, Camerillo, and Camerosa POTWs) for Copper, Nickel, and Mercury, consistent with the Implementation Plan in the CCW Metals TMDL. Finally, the request specifies that



the LARWQCB may authorize compliance schedules in NPDES permits for up to 15 years for Non-MS4 Permitted Stormwater Dischargers (general industrial and construction stormwater permittees) for Copper, Nickel, Mercury, and Selenium, consistent with the Implementation Plan in the CCW Metals TMDL.

### **Today's Action**

Pursuant to CWA section 303(c) and the implementing federal regulations at 40 CFR 131, the EPA hereby approves this compliance schedule authorizing provision. Section 303(c) of the CWA requires the EPA to approve or disapprove new or revised state-adopted water quality standards. The State regulatory provisions subject to the EPA's approval authority under section 303(c) are those addressing antidegradation, beneficial uses, water quality criteria, and certain policies and procedures for the implementation of water quality standards for surface waters. Under the EPA's water quality standards regulations, a state has discretion to include in its standards "policies generally affecting their application and implementation, such as mixing zones, low flows and variances" 40 C.F.R. 131.13. Though discretionary with the state, the Administrator has stated that authorizing provisions for compliance schedules such as that described in this request are subject to the EPA's review under 40 CFR Section 131.13. In re Star-Kist Caribe, Inc., 3 E.A.D. 172, 182-183, n16 (Adm'r 1990), modification denied, 4 E.A.D. 33 (E.A.B. 1992); In re City of Ames, 6 E.A.D. 374 (EAB1996). As such, authorizing provisions for compliance schedules are subject to the EPA's review and approval under the EPA CWA section 303(c).

### **Basis for Approval**

In regards to this request to approve a compliance schedule authorizing provision, the EPA based its decision on CWA section 303(c) and implementing regulations at 40 CFR 131.5 and 131.6 in conjunction with the approved CCW Toxics and CCW Metals TMDLs (which both included extensive public participation). Specifically, the EPA focused on the implementation plans and schedule in the CCW Toxics and Metals TMDLs.

The EPA also considered guidance regarding compliance schedule authorizing provisions and the requirements at 40 CFR 122.47 for incorporating compliance schedules in specific NPDES permits. In 2007, the EPA headquarters clarified how permitting authorities should incorporate compliance schedules in specific permits after the State has clearly indicated in its water quality standards or implementing regulations that it intends to allow them ("Compliance Schedules for Water Quality-Based Effluent Limitations in NPDES Permits," Memorandum from James A. Hanlon to Alexis Strauss, May 10, 2007, enclosed).

As discussed in the 2007 memorandum, the permitting authority should document the basis for its conclusions that the compliance schedule is necessary and appropriate for that permit and will result in compliance as soon as possible within the timeframe allowed by the compliance schedule authorizing provision. The compliance schedule must provide an enforceable sequence of actions or operations that will lead to compliance with the effluent limitation along with associated interim milestones and schedules. As noted in the request letter, the LARWQCB understands that the requirements of 40 CFR section 122.47 must be satisfied and documented on a permit-by-permit basis when including compliance schedules in any NPDES permit and intends to follow this approach once authorized.

Under the current statewide compliance schedule policy, compliance schedules for implementing WLAs in TMDLs may exceed 10 years, as specified in an adopted TMDL Implementation Plan (State Water



Resources Control Board Resolution No. 2008-0025, "Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits," ("Policy") paragraph (6)(c)). However, the Policy does not apply to CTR criteria; the CTR had a compliance schedule authorizing provision when promulgated but that provision had a sunset date of May 2005. For this reason, the LARWQCB would not be able to include a compliance schedule in any specific NPDES permit for CTR criteria without an approved compliance schedule authorizing provision.

Under the Policy, any resulting schedule in a specific NPDES permit must be both as short as possible and within the timeframe set forth in the TMDL implementation plan. The LARWQCB considered the technical issues and complexities of the multi-party agreements and programs to be implemented to achieve the WLAs and concluded that the 20 -year implementation schedules in the CCW Toxics TMDL, and the 10 and 15-year implementation schedules in the CCW Metals TMDL provide sufficient time for flexibility to deal with uncertainties while achieving water quality as soon as possible. While the compliance schedule authorization provision establishes outer bound limits of 20, 15, and 10 years, it does not presume or guarantee that a specific discharger may receive compliance schedules with the full time limit. Rather, each specific permit containing a compliance schedule must document that the schedule in question will lead to attainment with the permit's water quality-based effluent limit (WQBEL) "as soon as possible" and no later than the time limit for the relevant TMDL for which the WLA is issued.

Furthermore, the LARWQCB states that during the incorporation of WLAs into permits as WQBELs, the Water Boards will provide justification supporting the compliance schedules to ensure that the compliance schedules meet all of the requirements of 40 C.F.R. section 122.47.

### **Public Participation**

The EPA compliments the State on its efforts to include the public in the development and review of new and revised water quality standards. Public involvement is an integral component of a successful water quality program. Based upon our review of the administrative record for the subject TMDL, the public review procedures followed by the State in the development of State Board Resolution Numbers 2005-0068 and 2006-0078 were consistent with the procedural requirements for public participation in triennial reviews, adoption, and revision of state water quality standards.

### **Endangered Species Act Section 7**

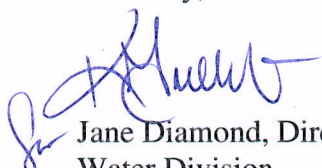
Section 7(a)(2) of the Endangered Species Act (ESA) states that each federal agency shall, in consultation with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service (the Services), ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any federally-listed endangered or threatened species (listed species) or result in destruction or adverse modification of designated critical habitat of such species. Consistent with the requirements of Section 7(a)(2) and implementing regulations at 50 CFR Part 402, EPA has initiated consultation with the Services regarding our action approving the compliance schedule authorizing provision under the Clean Water Act. We anticipate concluding consultation in the near future. Although we do not believe our action will cause any impacts of concern on listed species or designated critical habitat, our approval is subject to the outcome of the ESA Section 7(a)(2) consultation process.

## Conclusion

This approval action authorizes the LARWQCB to include compliance schedules, provided they are consistent with the CWA and the EPA regulations, in NPDES permits issued to existing dischargers for more stringent WQBELS based on WLAs in the State's TMDL for Toxic Pollutants and Metals in the Calleguas Creek Watershed and Mugu Lagoon waters.

In closing, the EPA commends the State Water Board staff for its excellent work on the TMDL and implementation schedule. If there are any questions regarding our action, please contact Janet Hashimoto at (415) 972-3452 or Suesan Saucerman at (415) 972-3522 of the Standards and TMDL Office. As always, we look forward to continued cooperation with the State in achieving our mutual environmental goals.

Sincerely,



Jane Diamond, Director  
Water Division

Enclosure (Hanlon memo)

cc: Deborah Smith, Chief Deputy Director, LARWQCB  
Renee Purdy, Section Chief of Regional Programs, LARWQCB  
Noah VanGilder, USEPA, Office of Water