

NPDES PROGRAM

The NPDES program deals with the discharges of pollutants from point sources to surface waters. Certain discharges to surface waters that are not subject to NPDES requirements can be regulated by waste discharge requirements issued under the Non Chapter 15 Program. (See subsequent section on Non Chapter 15 Program.)

The NPDES Program consists of two somewhat distinct parts - the so-called "waste water" part and the so-called "storm water" part. The waste water portion of the NPDES program is well established, having been in place since the 1970s. It is also well funded, compared to some other programs and compared to the storm water portion of the NPDES program. The waste water portion of the NPDES program deals with pollutants in "waste water" effluents discharged to surface waters from publicly owned treatment works, industrial facilities, and other facilities. In contrast to the waste water portion of the NPDES program, the storm water portion of the NPDES program was not initiated until about 1990. The storm water portion of the NPDES program deals with discharges of pollutants in runoff from municipalities and industrial sites, including construction sites. The storm water portion of the NPDES program has long been inadequately funded. Although storm water funding has recently increased, funding still falls short of what is needed. Although additional funding is needed for both portions of the NPDES program, the need is greater for the storm water portion, since the waste water portion of the program is better funded than the storm water portion; the storm water portion of the program is intended to address polluted runoff (which is currently the primary cause of water quality problems); and requirements in storm water permits are changing more than those in waste water permits.

Over the years since the inception of the NPDES program, increasingly stringent limits on waste water discharges have greatly reduced water quality and beneficial use problems resulting from such discharges. Waste water discharges continue to pose the potential to cause problems, but, as a group, they are no longer the primary cause of current water quality problems. Polluted runoff is now the primary cause of water quality problems. The Nonpoint Source program and the storm water portion of the NPDES program are intended to correct these problems.

By law, NPDES permits are supposed to be reissued every five years. However, NPDES waste water permits have progressed to the point where the changes in permit requirements in the current reissuance cycle are, in most (but not all) cases, relatively minor and are of relatively minor significance to the protection of water quality and beneficial uses. Nevertheless, even where there are no significant changes, the reissuance process is time consuming and resource intensive. In contrast, major changes in requirements are still being made (or considered) as NPDES storm water permits are reissued and those changes often are of major significance to protection of water quality and beneficial uses.

Where major changes in permit requirements are proposed (or where the proposed permit requirements are controversial for any other reason), the permit reissuance process can be extremely time consuming and resource intensive. This has been the case with the still-ongoing reissuance process for the municipal storm water permit for San Diego County. This process was initiated more than five years ago, but a reissued permit has yet to be adopted. This was also the case during the last NPDES permit reissuance cycle with the permit for the discharge from South Bay Power Plant to San Diego Bay and the permits for discharges from shipyards to San Diego Bay. After a very protracted SDRWQCB reissuance processes, petitions were filed for SWRCB review of these permits. After the SWRCB acted on the petitions, lawsuits were filed on these permits. Over three years elapsed between when the permit reissuance process for the South Bay Power Plant was initiated and when all permitting actions associated with the lawsuit settlement were completed. Over four years elapsed between initiation of the permit reissuance process for the shipyards and the final superior court ruling on the lawsuit. Such lengthy permitting processes, appeals, and lawsuits require substantial SDRWQCB staff resources, as well as time. The South Bay Power Plant permit is due to be reissued in FY 01-02 and the shipyard permits are due to be reissued in FY 02-03. The reissuance process for these permits may again prove to be protracted, especially to the extent that more stringent requirements may be appropriate. Consequently, it is important to recognize that "uniform cost factors" for NPDES permit reissuance are unlikely to provide a realistic estimate of the actual resources needed for the SDRWQCB to reissue these or certain other permits.

Most of the NPDES waste water permit reissuance workload is concentrated in one year of the five year reissuance cycle. This makes it difficult or impossible to maintain adequate compliance oversight activities level during that year. In order to even out the reissuance workload in the past, the SDRWQCB has issued permits for a period of less than five years. By shortening the reissuance cycle, this approach increases the staff resources devoted to reissuance, and, therefore, reduces the staff resources devoted to compliance oversight. Since this approach has not been advantageous for purposes of protecting water quality or beneficial uses, SDRWQCB staff does not plan to recommend that permits be issued for periods of less than five years. In order to even out the reissuance workload, SDRWQCB staff is considering allowing some low threat-to-water-quality permits to expire and be automatically administratively extended pending reissuance, as provided for by state and federal law. No adverse impacts to water quality or beneficial uses are expected to result from this approach.

Largely due to the priority USEPA and the SWRCB have assigned to eliminating and avoiding backlogs of expired permits, reissuance has been emphasized over issuance of new permits. This has the potential for two undesirable results. First, permits for proposed new discharges are likely to be delayed, with possible resulting adverse consequences for permit applicants. Second, permits for existing, but previously

unpermitted discharges are likely to continue without permits and the accompanying compliance oversight, with possible resulting adverse consequences for water quality and beneficial uses. In the future, after the permits that expire in FY 2001-2002 are reissued, SDRWQCB staff intends to prioritize new permits over permit reissuance. At this time, new permits are planned for existing discharges from Navy facilities concentrated around San Diego Bay and for discharges from recreational boat marinas in the several small craft harbors located in the San Diego region. These permits are likely to include requirements for both waste water and storm water, as is the case in SDRWQCB-issued permits for boatyards and shipyards. One new NPDES permit is also planned for a dairy. This permit would replace existing non-NPDES waste discharge requirements for the dairy. Three other recently adopted NPDES permits replaced non-NPDES waste discharge requirements for other dairies.

Facilities regulated under the waste water portion of the NPDES program are inspected infrequently – often less than once annually at “minor” facilities. In contrast, most facilities regulated under the Non Chapter 15 program are inspected at least three times annually. SDRWQCB staff intends to pursue adequate resources to conduct additional inspections at facilities regulated under that NPDES waste water program. A preliminary goal is to conduct three inspections annually at all facilities which are categorized as “major,” “threat to water quality category 1,” or “complexity category A;” or where compliance is based on best management practices (BMPs) and to conduct one inspection annually at all other facilities.

Facilities regulated under the storm water portion of the NPDES program are also inspected infrequently. SDRWQCB staff intends to pursue adequate resources to conduct additional inspections at facilities regulated under that NPDES storm water program. The following are preliminary goals:

1. Inspect each municipal storm water copermitee at least once annually. Such inspections could consist of both field work and file reviews analagous to a pretreatment compliance audit or inspection.
2. Inspect each industrial storm water site on the average of once every two years.
3. Inspect each construction storm water site once per year. Annual inspections are important because construction is often completed in less than one year and even more often in less than two years.

SDRWQCB staff intends to increase the number of inspections over a period of years, as the level of staff effort necessary to deal with industrial storm water non-filers is expected to decrease.

Since they are both intended to deal with polluted runoff, the storm water portion of the NPDES program and the Nonpoint Source program need to be closely integrated and coordinated. SDRWQCB staff needs to determine how the two programs can fit and work together most effectively. One area where the storm water portion of the NPDES program and the Nonpoint Source program, as well as the Water Quality Certification

program, can be integrated and coordinated is participation in the CEQA process. Although new development is a major cause or source of water quality and beneficial use problems and threats (from polluted runoff and physical modifications), and although the CEQA process is an important tool for preventing or mitigating those problems and threats, the SDRWQCB has not had adequate resources to participate in the CEQA process. SDRWQCB staff intends to pursue funding to enable it to fully participate in the CEQA process. SDRWQCB staff anticipates that participation in the NPDES program to address needs and concerns related to the storm water portion of the NPDES program, the Nonpoint Source program, and the Water Quality Certification program can be readily integrated and coordinated.

It is important to distinguish between different roles for SDRWQCB role in the CEQA process. Although it is seldom the CEQA lead agency, the SDRWQCB has an important role to play in the CEQA process when it is not lead agency. Early and ongoing SDRWQCB participation in the CEQA process when another agency is the lead can prevent water quality / beneficial use problems and/or reduce the time and expense of preventing and/or correcting such problems.