

Department of Water and Power



the City of Los Angeles

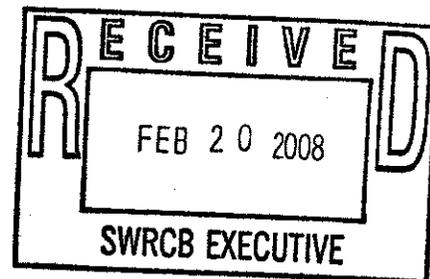
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February 20, 2008

Ms. Jeanine Townsend
Acting Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, California 95814



Dear Ms. Townsend:

Subject: Comment Letter - NPDES Compliance Schedule Policy

The Los Angeles Department of Water and Power (LADWP) appreciates the opportunity to comment on the State Water Resources Control Board's (State Board) proposed statewide policy on compliance schedules in National Pollutant Discharge Elimination System (NPDES) permits, and commends the State Board staff efforts toward the development of a uniform policy that is both equitable and unambiguous.

LADWP encourages the State Board to consider compliance schedules that will pursue protection of the environment, while being mindful of the potential negative effects it may have on industry. There are many new statewide policies that will impact LADWP and its future plans to reconfigure its generating stations, use reclaim water, develop and construct green power projects such as wind power and fuel cell technology and other projects that will require NPDES permits with compliance schedules to meet Federal, State, and Regional permit requirements. LADWP encourages the State Board to implement a compliance schedule policy that encourages the continued operation of existing services and the development of new services as we work together to build a better environment.

LADWP submits the following comments:

1. Comment No. 1.: Issue 1 - Scope, pgs. 39-45

LADWP supports the State Board staff's recommendation to adopt alternative 1.d, in which the compliance schedule policy supersedes compliance schedule provisions in all regional and statewide plans and policies, with the exception of effective TMDLs and the SIP.

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2. Comment #2.: Issue 2 – Duration of Compliance Schedules, pgs. 45-48

LADWP does not support the State Board alternative 2.b but instead prefers alternative 2.c, which allows for the duration of a compliance schedule of up to ten years (two permit terms) after initial inclusion of the compliance schedule in the NPDES permit. LADWP believes that a facility will need more than one permit term of five years when there are committed resources to modify, upgrade its operations to increase efficiencies, and/or meet tougher permit requirements. Particularly when the project includes the restoration or reconfiguration of multiple units and structural components of the intakes, and thus requiring phased construction.

Alternative 2.b as written does not allow for the need of phased construction. In addition, the wording "unforeseen circumstances beyond the control of the discharger" to be determined by the Regional Boards would need to be better defined. Dischargers need to have some confidence that compliance schedules for certain situations that would require extensive design and construction would be allowed more time than just one permit term.

3. Comment #3.: Issue 3 – Deadlines for Complying with Applicable Standards, pgs. 48-50

As discussed above in comment #2, LADWP also prefers alternative 3.c. rather than alternative 3.b. suggested by the State Board, which restricts the duration of a NPDES compliance schedule to no more than fifteen years after the adoption, revision, or new interpretation of applicable standards. LADWP believes that as long as certain criteria and/or milestones are met, then the 15-year deadline is not pointless or "too long to be meaningful" if that amount of time was required to complete phased construction of a facility with multiple units and outfalls.

LADWP believes that the State Board's recommendation of Alternative 3.b, in most cases may prove to be adequate; however, it may not be sufficient for extensive facility modifications necessary to meet compliance with state wide policies such as 316 b where not only design and construction is necessary but also years of verification monitoring after construction is complete.

4. Comment #4.: Issue 4 – Extended Compliance Schedules for TMDL-based Permit Limitations, pgs. 50-53

LADWP supports the recommended alternative 4.c, which adopts a compliance schedule policy that specifically allows additional time to comply with the NPDES permit limitations that are based on a TMDL. This will facilitate needed data gathering efforts, which often take many years to complete which is essential for TMDL compliance.

5. Comment #5.: Issue 5 – Discharger Eligibility, pgs. 54-56

LADWP supports the recommended alternative, 5.b, defining “new” and “existing” dischargers based on the SIP definitions, which removes any ambiguity, providing clear guidance on the appropriate use of compliance schedules.

6. Comment #6.: Issue 6 – Qualifying Permit Limitations, pgs. 56-60

LADWP supports the combined recommendations of alternative 6.a.2 and 6.b.2, which will assure that any compliance schedules that are already established will remain in effect for most of the regions (LA inclusive), and clearly defines what is meant by “newly interpreted” water quality standards.

7. Comment #7.: Issue 7 – Applicability to Prohibitions, pg. 61

LADWP supports the recommended alternative 7.a, which does not specifically authorize compliance schedules for NPDES permit limitations implementing prohibitions. This is a very reasonable decision that does not preclude the regional boards from adopting conditional prohibitions at a later date.

8. Comment #8.: Issue 8 – Application Requirements, pgs. 61-67

The State Board is requiring the discharger seeking a compliance schedule to demonstrate to the satisfaction of the State Board why the additional time for the compliance schedule is warranted. The recommendation of the State Board is alternative 8.f. LADWP does not support this recommendation for the following reasons:

- Alternative 8.f. item 5, pg. 66 states: “The highest discharge quality that can reasonably be achieved until final compliance is attained”. LADWP believes that the discharger will not be able to provide this information to the State Board and therefore, it is not feasible to expect data on the highest quality without first conducting pilot-tests. In order to attain “the highest quality data”, the time required to test and gather data may pre-empt facilities from meeting the time constraints in the compliance schedule, especially for complicated or phased projects.
- Alternative 8.g. item 6, pg. 67 states “The proposed schedule is as short as practicable, given the type of facilities being constructed or programs being implemented, and industry experience with the time typically required to construct similar facilities or implement similar programs”. This statement has left out the ability for the discharger to consider the economic, technical, and other relevant factors. LADWP believes it is the State Board’s objective to provide a statewide policy that is equitable and provides clear guidance. The omission of economic, technical, and other relevant factors, creates a broad, undefined gap as to what is as short as practicable and how can this be determined. LADWP believes that these factors should be reinstated in the application requirements.

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LADWP supports alternative 8.c. which allows for the documentation of discharge quality that can reasonably be achieved until final compliance and also allows for consideration of "economic, technical, and other relevant factors" in order to prove that the schedule is as short as practicable. Alternative 8.c. is based on the current Los Angeles Basin Plan and believes that this alternative should be the recommendation for the statewide compliance schedule policy.

9. Comment #9.: Issue 9 – Permit Requirements, pgs. 67-70

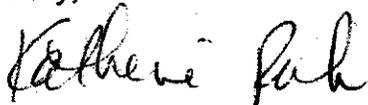
The State Board's recommendation is alternative 9.c, which is based on the SIP provisions. LADWP does not agree with the State Board's recommendation due to ambiguous wording and unclear ramifications of alternative 9.c. item #4. Alternative 9.c, item #4 states that "the entire compliance schedule, including interim requirements and final permit limitations, shall be included as enforceable terms of the permit, whether or not the final compliance date is within the permit term." It is LADWP's understanding that interim requirements and final permit limitations are always enforceable when written into a permit. The wording is ambiguous since when a permit expires and there is not a new permit it is still administratively enforceable until the permit is renewed and the old permit is then rescinded. The wording in this alternative becomes confusing as if to state that even if the permit has been renewed and the old permit rescinded that the old permit is still enforceable. LADWP believes that if a permit is renewed and another permit adopted in its place, then the permit requirements, if not met within the first permit term, need to be renegotiated or carried over to the renewed permit and all terms in the old permit expire. Clarification of the intended meaning and consequences of item #4 is needed.

LADWP believes alternative 9.b. complies with the stated objectives of the State Board, without inclusion of language that is unclear and supports alternative 9.b.

Again, LADWP appreciates the opportunity to comment and looks forward to working with the State Board staff on the statewide compliance schedule policy.

If you have any questions, please contact Mr. Bob Krivak of the Wastewater Quality Compliance Group at (213) 367-1339.

Sincerely,



Katherine Rubin, Interim Manager
Wastewater Quality Compliance

BK:jm

c: Mr. Bob Krivak