



# California Regional Water Quality Control Board

## Los Angeles Region



Linda S. Adams  
Cal/EPA Secretary

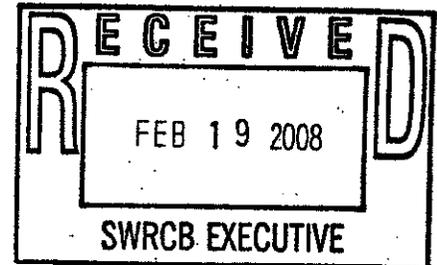
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Arnold Schwarzenegger  
Governor

Public Comment  
Compliance Sched. - NPDES  
Deadline: 2/20/08 by 12 p.m.

February 19, 2008

Ms. Jeanine Townsend, Acting Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814



### COMMENT LETTER – PROPOSED STATEWIDE POLICY FOR COMPLIANCE SCHEDULES IN NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS

Thank you for working to develop this policy for the benefit of clarity and statewide consistency.

The Los Angeles Regional Water Quality Control Board (Regional Board) staff has reviewed the Draft Policy for Compliance Schedules in National Pollutant Discharge Elimination System (NPDES) Permits (Policy) and the accompanying draft staff report, dated December 4, 2007. We have the following comments:

#### General Comments

We support the Draft Policy for Compliance Schedules for NPDES permits because it is all encompassing and it incorporates the best pieces of the existing compliance schedules from the various Regional Boards. However, we have specific comments requesting language changes; additional clarity; and, guidance regarding issues which will result from our implementation of the policy, following its adoption.

#### Specific Comments

1. A typographical error on Page 2 of the Agenda Discussion Section should be corrected to reference section “301” of the Clean Water Act, rather than the nonexistent section “1301.”
2. **Draft Item, Page 2, Paragraph 5** states, “A discharger who seeks a compliance schedule must demonstrate to the satisfaction of a Water Board that additional time is needed to design and construct facilities or implement new or significantly expanded programs and secure financing, if necessary, to support these activities in order to comply with a permit limitation specified to implement a new, revised, or newly

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interpreted water quality standard. If the Water Board determines that an existing discharger has met the application requirements for a compliance schedule specified in the proposed Policy, then the Water Board has the discretion to include an appropriate schedule in the permit."

#### **Comment**

The paragraph implies that if the discharger does not have plans to design and construct facilities, a compliance schedule is not warranted. The existing language should be broadened to include other circumstances with similar demonstrations required of them (i.e. emergency health and safety needs).

In some cases the health and safety of nearby residents is best served by allowing the discharge. For instance, a housing development the Outlook Project Homes was constructed on a hillside in the City of Santa Clarita. A dewatering system was installed at the base of shear keys for soil stabilization and drainage improvement in the area surrounding the Outlook Project Homes. The discharge is not able to immediately meet the final effluent limitations. However, dewatering the hillside is a vital component of keeping the hillside which is the location of the homes stabilized. The cost of treating the discharge to meet the applicable limits is prohibitive for the affected community. The implementation of a compliance schedule would provide an opportunity for the operator to explore other options for compliance including reuse of the waste water elsewhere, discharge to a treatment facility, or any other viable option. However, since the discharger does not have plans to design and construct facilities, the policy does not provide an opportunity for the discharger to secure a compliance schedule.

3. **Draft Item, Page 3, Paragraph 1** states, "The proposed Policy requires that a compliance schedule must include interim requirements and dates for their achievement and, if the compliance schedule exceeds one year, must also include interim numeric limitations for the pollutant. Numeric interim limitations for the pollutant must be based on current treatment facility performance or on existing permit limitations, whichever is more stringent. The entire compliance schedule, including interim requirements and final permit limitations, must be included as enforceable terms of the permit."

#### **Comment**

Often as a facility implements phased upgrades, or as technologies are brought online the option of "stepping down" the interim effluent limitations toward the final effluent limitation is available. However, the policy indicates that the interim limits

must be based on the current treatment technology (at the beginning of the project). Since the interim requirements and the final permit limitations must be included as enforceable terms of the permit, the only apparent way to adjust downward the interim effluent limitations, which will benefit the quality of the receiving water, is to reopen the permit. The policy language should be revised or clarified to allow a Regional Board to include multiple, phased interim effluent limitations for a specific pollutant, consistent with the expected performance of the phased upgrades, in situations where phased upgrades are planned.

4. **Draft Item, Page 3, Paragraph 2** states, "Any compliance schedule must require compliance as soon as possible. The proposed Policy specifies that, in general, the duration of the compliance schedule may not exceed five years or the life of the permit, whichever is less, and can in no event exceed ten years from the date of adoption, revision, or new interpretation of the applicable water quality standard..."

**Comment**

In some instances the new limitation may require the development of new technology to treat the discharge. Specifically, selenium had been detected in one of the groundwater cleanup projects that originally targeted MTBE. With the implementation of the California Toxics Rule and State Implementation Policy (SIP), the concentrations of selenium demonstrated reasonable potential. There was no technology immediately available to treat the discharge down to the level required. The Discharger has expended a considerable amount of resources in the development of a technology that can be implemented to treat the groundwater. It has taken over five years to develop a technology which they are currently pilot testing. The policy does not provide a mechanism to allow the discharger time to develop new technologies required to treat contaminants. The investments will benefit the entire scientific community when the treatment train is adjusted such that it can treat any amount of water. It could potentially be used by numerous other dischargers.

The policy should include special provisions for these limited cases where the discharger is allowed additional time when they must design, develop, test, and potentially scale up new technologies to treat the discharge. Otherwise, please clarify if the situation described above would be included in the statement later in paragraph two on Page 3 of the Draft Policy Item which states, "A compliance schedule may also be extended one permit term where unforeseen circumstances, beyond the control of the discharger, have arisen that preclude or significantly delay construction of the facilities or implementation of the programs expected to result in compliance with the final permit limitation, even though the interim milestones have been met."?

5. Regional Board staff believes that Finding 7 should be revised as follows, so that it coincides with the language on Page 2 of the staff report:

"The State Water Board has adopted compliance schedule provisions for California Toxics Rule (CTR) criteria in the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP); and six of the nine Regional Water Quality Control Boards (Regional Water Boards) have adopted NPDES compliance schedule authorizations in their water quality control plans (Basin Plans). The compliance schedule authorizations vary in their coverage, authorized length, and other provisions.

6. **Draft Policy, Page 2, Item 9.** "It is the intent of the State Water Board that compliance schedules for NPDES permits only be granted when the discharger must design and construct facilities or implement new or significantly expanded programs and secure financing, if necessary, to support these activities in order to comply with permit limitations implementing new, revised, or newly interpreted water quality standards, and that any schedules be granted for the minimum amount of time necessary to achieve compliance."

**Comment**

See our response to comment 2 on Page 2 of this document.

7. Regional Board staff requests that Resolve 1.e., which reads:

*"Newly interpreted water quality standard" means a narrative water quality objective that, when interpreted during NPDES permit development (using appropriate scientific information and consistent with state and federal law) to determine the permit limitations necessary to implement the objective, results in a numeric permit limitation more stringent than the limit in the prior NPDES permit issued to the discharger.*

be modified as follows, so that the Policy recommends alternative 6.b.3 (on Page 60 of staff report), rather than alternative 6.b.2 (on Page 59 of staff report):

*"Newly interpreted water quality standard" means a narrative or numeric water quality objective that, when interpreted during NPDES permit development (using appropriate scientific information and consistent with state and federal law) to determine the permit limitations necessary to implement the objective, results in a numeric permit limitation more stringent than the limit in the prior NPDES permit issued to the discharger.*

By choosing alternative 6.b.3, the State Board would be providing necessary discretion to the Regional Board to address situations in the foreseeable future. We are in agreement with the examples of such situations presented in the staff report. However, the one which is of more concern is the situation where the technology in analytical methods/analytical instrumentation improves to the point where previously undetected pollutants start showing up in detectable concentrations, due to a more sensitive method detection level. All of a sudden, the discharge once believed to not have reasonable potential could have reasonable potential and require water quality based effluent limitations (WQBELs). This could be the case for pesticides and PCBs, which have CTR criteria which is one or more orders of magnitude more stringent than the method detection levels achievable under currently approved test methods in 40 CFR 136. If the Policy is adopted as proposed (following alternative 6.b.2, instead of 6.b.3) the Discharger would not be eligible for a compliance schedule under the situation provided and the incentive for Dischargers to search for more sensitive test methods (referenced in the SIP) would go away.

8. Since California Water Code Section 13360 precludes the Regional Board from specifying the manner of compliance, Regional Board staff requests that Resolve 2, be modified as follows:

**“Scope and Applicability.** This Policy shall apply to all NPDES permits adopted by the Water Boards that must comply with Clean Water Act section 301(b)(1)(C) and that are modified or reissued after the effective date of the Policy. This Policy authorizes a Water Board to include a compliance schedule in a permit for an existing discharger to implement a new, revised, or newly interpreted water quality standard where the Discharger, following the compliance schedule application requirements referenced in Resolve 3, has demonstrated to the satisfaction of the Water Board that a compliance schedule is warranted as per the policy, the Water Board determines that the discharger must design and construct facilities or implement new or significantly expanded programs and secure financing, if necessary, to support these activities in order to comply with a permit limitation specified to implement the standard. Compliance schedules, however, are not authorized under the following circumstances: ...”

9. Regional Board staff request clarification on Resolve 2.b and 2.c, with respect to the “revised as of July 1, 2005” date. The date is not referenced in the staff report, and the significance of the date eludes us. Regional Board staff suggest that the date in parenthesis be replaced by the dates in which the NTR and CTR were promulgated, i.e.,:

- 2.b. "Compliance schedules are not authorized for permit limitations implementing criteria promulgated for California in the National Toxics Rule, as amended (40 C.F.R. §131.36, revised as of July 1, 2005 promulgated December 22, 1992)."
- 2.c. "Compliance schedules are not authorized under this Policy for permit limitations implementing criteria promulgated in the CTR, as amended (40 C.F.R. section 131.38, revised as of July 1, 2005 promulgated May 18, 2000). Compliance schedules for existing CTR criteria are authorized only under the SIP. However, this Compliance Schedule Policy authorizes compliance schedules for permit limitations implementing CTR criteria that are revised by the United States Environmental Protection Agency after the effective date of this Policy and for more stringent permit limitations resulting from a newly interpreted water quality standard."
10. We agree that the Regional Board should do a thorough job in evaluating information submitted by the Discharger, however we believe that the burden of proof should be on the Discharger to provide adequate justification for the need to obtain a compliance schedule. Therefore, Regional Board staff requests that Resolve 4, be modified as follows:

"Review of Application. The Water Board is responsible for thoroughly evaluating the information submitted by the discharger in its application, and in particular, The Discharger is responsible for ensuring that the discharger information provided in the application has adequately demonstrated the need for time to design and construct facilities, or implement new or significantly expanded programs; and, secure financing, if necessary, to support these activities in order to comply with a permit limitation specified to implement a new, revised, or newly interpreted water quality standard."

In addition Regional Board staff would like clarification regarding the time when the Discharger is supposed to apply for a compliance schedule. Is it at the time of submittal of their Report of Waste Discharge (ROWD) for their permit renewal, or is it as soon as analytical data shows that a pollutant is persistently present in their effluent at levels that exceed a water quality objective? Also, how long will Regional Board staff have to review the Discharger's request for a compliance schedule? ROWDs have to be reviewed for completeness within 30 days of receipt.

11. Regional Board staff requests clarification as to the appropriate method for calculating numeric interim limits, with respect to Resolve 6.b., which reads as follows:

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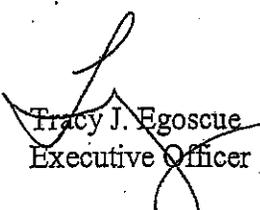
"b. If the compliance schedule exceeds one year, the Water Board shall establish interim numeric limitations for the pollutant in the permit; and may also impose interim requirements to control the pollutant, such as pollutant minimization and source control measures. Numeric interim limitations for the pollutant must be based on current treatment facility performance or on existing permit limitations, whichever is more stringent. If the existing permit limitations are more stringent, and the discharger is not in compliance with those limitations, the noncompliance under the existing permit must be addressed through appropriate enforcement action before the permit can be reissued, unless the anti-backsliding provisions in Clean Water Act section 402(o) are met."

Regional Board staff have, in the past, used the 95<sup>th</sup> percentile or the 99<sup>th</sup> percentile to calculate performance-based numeric interim limits, or used the maximum effluent concentration detected. However, at times, our Dischargers have raised the issue of not being able to recreate our calculations. It would be helpful if the State Board could standardize a methodology for calculating numeric interim limits, so that the process is uniform in all of the Regional Boards.

The final statement of Resolve 6.b. requires that permits that are prepared for Regional Board consideration is postponed until the enforcement actions have culminated. This will create more backlogged expired permits. Our recommendation is that the noncompliance under the existing permit should be addressed through appropriate enforcement action as soon as possible.

Again, thank you for working to develop this policy and for the opportunity to comment on it. Should you have any questions regarding our comments, please contact me at (213) 576-6605 or David Hung, Chief of the Watershed Regulatory Section, at (213) 576-6616.

Sincerely,

  
Tracy J. Egoscue  
Executive Officer

cc: Michael Levy, State Water Resources Control Board, Office of the Chief Counsel

Enclosure:

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