

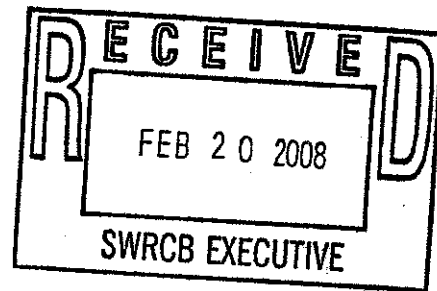


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Via Electronic Mail and Hand-Delivery

Tam Doduc, Chair, and Members
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Attn: Jeanine Townsend, Clerk to the Board

**Proposed Statewide Policy for Compliance Schedules in
National Pollutant Discharge Elimination System Permits**

Dear Chair Doduc and Members:

The County Sanitation Districts of Los Angeles County (Districts) appreciate the opportunity to provide comments on the State Water Resources Control Board's (State Board's) *Proposed Statewide Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits* (Draft Policy). By way of background, the Districts are a confederation of 24 individual special districts serving the wastewater and solid waste management needs of over five million people in 78 cities and unincorporated areas of Los Angeles County. The Districts own and operate eleven wastewater treatment facilities with a combined capacity of approximately 625 million gallons per day. Of these facilities, nine are located in the Los Angeles region and two are located in the Lahontan Region. The Districts support adoption of a statewide policy on compliance schedules for NPDES permits, both because a uniform statewide policy on compliance schedules will bring consistency to the state's NPDES program and because a statewide policy will allow for compliance schedules in regions where there is no current explicit authorization for such schedules, such as the Lahontan Region and under State Plans such as the California Ocean Plan. We do, however, recommend that changes be made to the Draft Policy to better accommodate the compliance challenges facing publicly-owned treatment works (POTWs) such as the Districts' facilities.

We would first like to emphasize that the availability of compliance schedules is critically important to the POTW community. In many cases, it is physically impossible for a POTW to meet adopted, revised, or newly interpreted water quality standards at the time a new permit limit becomes effective. As the State Board acknowledges in the Draft Policy, in the absence of a compliance schedule in the NPDES permit, a POTW can only be given time to comply through an enforcement order such as a Time Schedule Order or a Cease and Desist Order. Issuance of such an order does not shield the POTW from citizen suits pursuant to the Clean Water Act, even if the POTW is in full compliance with the order. We fully agree with this assessment. As a responsible public agency, the Districts strive for 100% compliance at all times, and future changes to water quality standards and their interpretation may necessitate future use of compliance schedules.

The Districts' most important concerns with the Draft Policy relate to the maximum compliance schedule length, the use of compliance schedules for California Toxics Rule (CTR) pollutants, the use of

compliance schedules in cases where a new interpretation of water quality objectives results in adjustments to numeric limitations, the use of compliance schedules for newly applied limits (due to changes in beneficial use designations or for other reasons), the use of compliance schedules to accommodate pursuit of Basin Plan amendments, and the definition of a "new discharger." Our recommendations on each of these issues are presented below.

1. The Maximum Compliance Schedule Length Should be Extended.

Section 5 of the Draft Policy restricts the duration of authorized compliance schedules to five years, with limited exceptions related to very narrowly defined unforeseen circumstances and compliance schedules included in a TMDL implementation plan. Overall, the time allowed for a compliance schedule cannot exceed five years from the date of adoption, revision, or new interpretation of a water quality standard. Based on our experience with design, permitting, financing, and construction of capital improvements to meet water quality standards, we believe that these timeframes are inadequate and should be extended. This is particularly important in the case of public entities such as the Districts, which are constrained by a myriad of laws regarding the expenditure of public funds, including rate increases, public contracting and bidding, and other issues.

Five years is simply not enough time in many cases to develop, coordinate, and implement the necessary tasks to ensure compliance. The Districts believe that it is in the public interest, and in accordance with the Clean Water Act's mandates, to develop a comprehensive strategy that is founded on a logical sequence of steps that are designed to investigate and implement the most cost-effective compliance solution. In most instances, the first step in this process is to identify pollutant sources and evaluate the feasibility and effectiveness of source control measures. For source control measures to be a feasible means of attaining compliance, sufficient time is needed to undertake the measures and evaluate their effectiveness. While the impact of source control measures affecting industrial dischargers can be estimated reasonably accurately in advance, control of residential sources cannot be as easily predicted. Residential source control is often voluntary, and participation rates can vary widely.

As an example, consider water quality standards for discharges of salts such as chloride. Clearly, source control is the preferred method of control, since treatment to remove salts from wastewater is costly, highly energy-intensive, and results in a waste product that is difficult to dispose of (brine). Implementation of source control for salts is a difficult, time-consuming process. In many cases, the majority of the salt loading is from water served to a community and from residential automatic water softeners. Although the Health and Safety Code allows bans on the installation of new water softeners under certain circumstances, the useful life span of a water softener is 12 years so it takes many years for existing water softeners to be taken out of service. It is difficult to properly size salt-removal treatment such as microfiltration/reverse osmosis (MF/RO) until source control has been implemented, because of uncertainties in estimating exactly how much and when the salt contributions would be reduced.

Another initial step in addressing new or newly interpreted water quality standards, in some instances, is examination of the appropriateness of the objective itself to a particular waterbody, through pursuit of site-specific objectives (SSOs). SSOs are used to tailor a water quality standard to a particular water body's site-specific characteristics. Development of an SSO can be expected to take many years from the initiation of technical studies through the development and adoption of a Basin Plan amendment and modification of a permit. For example, the Districts have been pursuing an SSO for ammonia for over eight years, and the SSO has not yet been fully adopted and incorporated into permit limits. Furthermore, although the expectation at the outset may be that, if approved, an SSO will result in permit limits that will not require the discharger to install end-of-pipe treatment, there are no assurances that the SSO will be approved, nor that it will result in a limit that will not require further treatment. Thus, a discharger could spend many years working on the development of the SSO, only to find that facility upgrades are still needed.

Another initial step that is appropriate in some instances is investigation of analytical methods. In some cases, interference during analytical procedures can result in apparent exceedances of permit limitations. Refinement of analytic methods is essential in these cases to determine the true extent of the compliance issue. For example, when faced with exceedances of cyanide limitations, the Districts pursued multiple studies of the cyanide test method over several years, eventually determining that the sample preservation method was causing false positives. When immediate analysis of effluent cyanide samples without preservation was implemented, compliance was demonstrated. If this due diligence in pursuing analytical methods had not been pursued prior to pursuit of treatment to remove cyanide, public funds would have been unnecessarily expended.

A well-planned, logical compliance strategy for a new permit limit will consist of consideration of source control, optimization of current treatment plant performance, adjustments to water quality objectives, and/or refinement of analytical techniques prior to expenditure of significant public funds for planning, design, financing, and construction of capital improvements. Without such logical evaluations of new permit limits, not only may public funds be expended unnecessarily, but unnecessary treatment processes may be built. It is important to keep in mind that there are environmental impacts associated with any wastewater treatment process, including energy consumption, air emissions, land use issues, traffic during construction, etc. Causing such environmental impacts is not justifiable if the additional treatment is proven to be unnecessary based on evaluations of the type described above. These types of impacts should be analyzed in the State Board's CEQA analysis for the proposed Policy. Additionally, the Districts believe that the State Board should produce evidence and/or analysis regarding the types of actions that might be required on a statewide scale to comply with all of the differing statewide and/or regional Basin Plan provisions (narrative and numeric), to demonstrate whether all of these actions are feasible to complete within five years. Such an analysis will also assist the State Board in a more complete analysis of potential CEQA impacts that will occur as a result of the proposed Policy.

Furthermore, a compliance schedule that is only five years long is not sufficient to allow such a strategy, and is not even sufficient, in many cases, to implement capital improvements. For example, in the State Board's *Policy for Implementing the State Revolving Funds (SRF) for Construction of Wastewater Treatment Facilities*,¹ the State Board estimated that moving a project from design to initiation of operation takes from three to twelve years to complete. Since a great many POTW projects depend upon the SRF for project funding, it is reasonable to expect that project completion will adhere to this time frame. As examples, the Districts required a full eight years to construct facilities to attain full secondary treatment at the Districts' Joint Water Pollution Control Plant, and also required eight years to upgrade seven of its water reclamation plants in the Los Angeles Region to nitrification/denitrification treatment to achieve compliance with ammonia water quality objectives.

The Districts believe that the State Board has the authority to allow for compliance schedules lasting greater than five years, based on existing case law.² While the Proposed Statewide Policy on Compliance Schedules in National Pollutant Discharge Elimination System Permits, Draft Staff Report, December 4, 2007 (Draft Staff Report) acknowledges that the Clean Water Act and federal regulations do not specifically limit an NPDES compliance schedule to five years, it references the U.S. EPA as stating that its experience has shown that five years is the maximum amount of time necessary for existing dischargers to complete the necessary planning, funding, and facility upgrades to achieve compliance with new water-quality based effluent limitations.³ However, the Districts' experience differs from the State Board's, in that the Districts entered into a federal consent decree with U.S. EPA that authorized *eight years* to construct facilities to attain full secondary treatment at the Districts' Joint Water Pollution Control Plant.

Therefore, based on the considerations detailed above, we recommend that the maximum compliance schedule duration be set at ten years after inclusion of the compliance schedule in an NPDES permit, with the

¹ As amended June 18, 1998.

² *Communities for a Better Environment v. State Water Resources Control Board*, 132 Cal.App.4th 1313 (2005).

³ Draft Staff Report, p. 45

possibility of a five-year extension should unforeseen circumstances arise. We recommend that unforeseen circumstances be defined more broadly than in the proposed Policy, to allow flexibility to address a variety of circumstances.

We further recommend that the maximum compliance schedule duration not be tied to the date when the applicable water quality standard was adopted, revised, or newly interpreted, but rather be solely tied to when effluent limitations are placed in an NPDES permit based on the water quality standard. As the State Board is aware, there are a number of different ways to interpret a water quality standard. For example, ammonia water quality standards depend upon pH and temperature. Depending on where pH and temperature are measured, and depending on the statistics used to derive the pH and temperature used to set a permit limit (i.e., average value, 90th percentile, etc.), the resulting ammonia limitations can vary significantly. The averaging period associated with an effluent limitation can also make a substantial difference with respect to attainment of compliance with an effluent limitation. Effluent limitations that can be met on a monthly-average or annual-average basis cannot necessarily be met on an instantaneous basis, due to fluctuations in the content of wastewater entering a treatment plant. An example of a pollutant for which the averaging period is crucial is chloride, which can exhibit a strong diurnal concentration fluctuation due to regeneration of automatic water softeners in the late-night hours. Until an actual effluent limit and averaging period is known, it is extremely difficult to design and build the appropriate level of treatment, and, in some cases, even to determine if treatment is necessary.

2. SIP Compliance Schedule Authorization for Numeric CTR Criteria Should be Extended Beyond May 2010 To Accommodate Newly Imposed Permit Limitations and Changing Beneficial Uses.

The Draft Policy does not authorize compliance schedules for existing criteria promulgated in the CTR; rather, it defers to the existing compliance schedule provision in the SIP. This provision authorizes compliance schedules only through May 18, 2010, when authority for compliance schedules "sunset." The Districts request that the State Board amend the compliance schedule policy to allow it to apply to new effluent limitations based on the CTR after the current sunset date.

New or more stringent permit limitations based on CTR criteria may be imposed in NPDES permits after May 2010 due to a variety of potential causes that are beyond the control of POTWs. The Districts' primary concern relates to establishment of more stringent effluent limitations based on potential future regulatory changes to beneficial use designations. In particular, the Districts discharge to a number of receiving waters currently designated with a conditional Municipal and Domestic Supply (MUN) beneficial use. Under this conditional designation, the MUN beneficial use designation has no legal effect until the Regional Board undertakes additional study and modifies the Los Angeles Region Basin Plan. If the MUN beneficial use becomes applicable to these waterbodies, the Districts will not be able to immediately meet effluent limits set in accordance with the CTR and the SIP. The compounds of most concern in such a situation would be disinfection by-products (DBPs) such as trihalomethanes and n-nitrosodimethylamine. These DBPs are not amenable to source control, so additional treatment measures would need to be designed, financed, permitted, and constructed to meet new effluent limits. In such a situation, a compliance schedule is warranted.

Furthermore, new or more stringent permit limitations may be imposed due to reasonable potential to cause or contribute to exceedances of CTR criteria caused by unforeseeable changes in the quality of influent arriving at the wastewater treatment plant. For example, changes to formulations of consumer products may result in increased influent concentrations of certain pollutants, and corresponding increases in effluent concentrations. Such a situation would be one that the Districts could not reasonably anticipate nor directly control, and thus the Districts cannot plan measures to be taken prior to May 2010 to assure compliance. If such a situation arises, a compliance schedule may be needed to undertake source control measures or make facility modifications.

Finally, new, lower detection levels resulting from improved analytical techniques could reveal the presence of pollutants that were not previously detected. When the CTR was adopted, there were over twenty compounds for which the CTR criteria were above detection levels. If new analytical techniques are developed with lower detection limits, they may reveal that pollutants are present above CTR criteria, and thus reductions in concentrations would be necessary.

It is our understanding that action on the part of U.S. EPA would be needed to remove the 2010 sunset date under the CTR. We recommend that the State Board take action to allow use of compliance schedules past the 2010 sunset date, and that the State Board request that the U.S. EPA address this issue as well.

3. The Definition of "Newly Interpreted Water Quality Standard" Compliance Schedules Should Not Be Limited to Narrative Water Quality Objectives, and Should Include Newly Interpreted Numeric Objectives.

The Draft Policy defines a "newly interpreted water quality standard" as a "narrative water quality objective that, when interpreted ... results in a numeric permit limitation more stringent than the limit in the prior NPDES permit issued to the discharger." We recommend that the Draft Policy be revised to state that a "newly interpreted water quality standard" can be a narrative or *numeric* water quality objective that results in a new permit limitation more stringent than the corresponding limit in the prior NPDES permit, consistent with Alternative 6.b.3 in the Draft Staff Report.

Restricting the definition of "newly interpreted" water quality standard limits to narrative water quality objectives unnecessarily restricts the situations under which compliance schedules can be used. There are situations where a compliance schedule is warranted due to a new interpretation of a numeric limitation. For example, assignment of new beneficial uses may result in application of new, numeric effluent limits. In this case, the limits would be assigned due to a new interpretation of a water quality standard, but under the Draft Policy a compliance schedule would not be allowed because the water quality criteria are numeric. A similar situation would arise where an updated reasonable potential analysis or refinement in analytical technique occurs that results in a new, more stringent permit limitation based on a numeric water quality criterion. No justification is provided in the Draft Staff Report as to why compliance schedules should not be allowed in such cases.

4. Compliance Schedules Should be Allowed for Pursuit of Special Studies and/or Basin Plan Amendments Prior to Expending Scarce Public Resources on Potentially Unnecessary Facility Modifications.

Section 2 of the Draft Policy authorizes compliance schedules where a Regional 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...." Given this definition, it appears that the Draft Policy does not authorize the use of compliance schedules to allow the permittee to conduct special studies, such as site-specific objectives, water effects ratios, translators, mixing zones, and use attainability analyses, prior to proceeding with costly facility modifications or other control measures. Therefore, it appears that the Draft Policy represents a major departure from the SIP and past practices by the Regional Boards. These studies are crucial where, for example, generally adopted water quality standards may not be applicable to the site-specific receiving water, and the successful preparation and implementation of these studies can conserve scarce resources for necessary, more environmentally beneficial facility modifications or other alternative compliance strategies. The Districts request that the Draft Policy be revised to specifically allow special studies to comprise a portion of any compliance schedule, and that these tasks be considered as part of the "minimum amount of time necessary to achieve compliance." Such studies are an essential part of a comprehensive strategy to address compliance, as discussed previously in Comment 1.

5. **"New Dischargers" Should be Defined In a Manner Consistent with Federal Law.**

The Draft Policy defines the term "new discharger" as the "owner and operator of any building, structure, facility, or installation from which there is or may be a 'discharge of pollutants' (as defined in 40 CFR Part 122) to surface waters of the United States, the construction of which commences after a new, revised, newly interpreted water quality standard becomes applicable." This definition is inconsistent with the definition of a "new discharger" under federal regulations, and we recommend that it be revised to be consistent with federal regulations, so that compliance schedules are uniformly applied to new dischargers. Of particular interest to the Districts is the fact that a new discharger under federal law includes a discharger that has never received a finally effective NPDES permit. We recommend that the Draft Policy specify that discharges regulated by waste discharge requirements (WDRs), which are then required to be regulated by an NPDES permit (due to changes in the law or regulatory interpretation of what constitutes a "water of the United States," rather than changes in discharge location) be allowed reasonable needed time to comply with any discharge requirements imposed under the NPDES permit that are more stringent than those in the WDR. In such a situation, a compliance schedule would be appropriate.

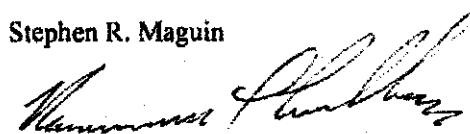
6. **Interim Milestones Should be Flexible Enough to Accomodate Changes That May Occur Over the Compliance Schedule Period.**

Where compliance schedules are provided, the Draft Policy requires the imposition of interim requirements as well as the dates for their achievement. While the Districts do not *per se* object to the imposition of general interim requirements (including interim effluent limitations), the Districts are concerned about the impact of unforeseeable changes on a permittee's ability to comply with detailed, inflexible interim requirements. Water Code section 13360 prohibits the Regional Boards from specifying a permittee's manner of compliance; therefore, the Districts presume that interim limitations will not set forth enforceable detailed requirements as to *how* a permittee is to comply with final limitations, with corresponding dates for completion of each step. Given the fluid nature of construction projects, which are prone to daily/monthly scheduling changes, permittees need some relief from inflexible internal deadlines, as long as final limitations are met by the conclusion of the compliance schedule. The Districts would appreciate clarification by the State Board on this issue prior to adoption of the Draft Policy.

In conclusion, while the Districts support adoption of a statewide compliance schedule policy, we recommend several changes to the Draft Policy to better address the challenges faced by POTWs in attaining 100% compliance in today's complex regulatory environment. Thank you for the opportunity to comment on this critical state policy.

Very truly yours,

Stephen R. Maguin



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