

commentletters - Comment Letter - NPDES Compliance Schedule Policy

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Date: Friday, January 18, 2008 12:50 PM
Subject: Comment Letter - NPDES Compliance Schedule Policy

This e-mail is intended for Janine Townsend, Clerk of the Board ...

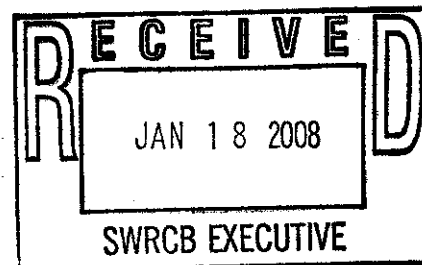
Hi Janine,

I am an EPA contractor who drafts NPDES permits for several of your Regional Water Boards. I received a copy of the Draft Policy for Compliance Schedules in NPDES Permits and appreciate the State Water Board's effort to provide some standard guidance and policy on this subject. I have also attached to this e-mail some comments in response to the draft Policy. Thank you for the opportunity to provide input.

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1. Please consider clarifying the draft Policy's definitions and use of the terms "water quality standard" and "water quality objective." NPDES regulations define "water quality standards" to include beneficial uses and water quality criteria (40 CFR 131.3), and the CA Water Code defines "water quality objective" as a limit or level of a pollutant established for the reasonable protection of beneficial uses. (Water Code sec. 13050) A statement that the Policy authorizes compliance schedules to implement new, revised, or newly revised "water quality standards" can suggest that a compliance schedule is appropriate following a new use designation for a receiving water. And, the draft Policy's definitions of "new, revised, or newly interpreted water quality standard" as a water quality standard ... and "newly interpreted water quality standard" as a water quality objective could lead to confusion or, in a worst case, some legal wrangling.
2. Please consider specifically addressing the circumstances of new water quality objectives for metals, when site specific translators are developed, when new hardness data changes water quality objectives for hardness dependent metals, and when site specific water quality objectives are established. Clarify whether these circumstances would be new interpretations or new standards that would open the window for compliance schedules and interim limits.
3. Please clearly address the timing of discharger requests for compliance schedules and interim limits. With the time and labor burdens of reopening permits, it would be good to limit that window to the period of permit issuance or reissuance. On the other hand, less sophisticated dischargers may never recognize a need for a compliance schedule and interim limits until a Regional Water Board permit writer recognizes that need when reissuing a permit. In those circumstances, the "application requirements" may not easily come together in the short time period between recognition of the need and the time when the Regional Water Board wants to reissue the permit. To avoid reopening permits, perhaps the Policy can specifically state that the burden is on the discharger to submit the application requirements with a ROWD for permit reissuance, or within 90 days following submittal of a ROWD. If a discharger is unable to submit the "application requirements" in that time frame to the satisfaction of the Executive Officer, then a Cease and Desist Order (with a compliance schedule) must be adopted concurrently with the reissued permit.
4. When deriving interim limits from the more stringent of existing limits or treatment performance, often there are no existing limits, and there is limited

data reflecting treatment performance. This has often been the case over the past 5 years, for example, when deriving interim limits for CTR pollutants for smaller dischargers. When there is a single data point for a CTR pollutant that results in a finding of reasonable potential and a need for limits, that single data point also reflects "treatment performance" and may be used directly as the interim limit. Please consider these circumstances of limited data and indicate whether the limited data should be used to establish an interim limit or whether there is an alternative.

5. The Policy should specifically address whether compliance schedules and interim limits are appropriate for general permits. And if compliance schedules and interim limits are to be authorized in general permits, the Policy should specifically state that a permit writer must have enough information about the group of dischargers to satisfy the application requirements (or criteria) that are listed in section 3 of the Resolution; i.e., a permit writer must be able to say that (1) diligent efforts have been made by the group of dischargers to quantify pollutant levels in discharges, and that (2) source control efforts are underway or completed by the group of dischargers ... etc.

6. Anti-backsliding is mentioned in section 6. b of the draft Resolution. Because compliance schedules and interim limits will only be necessary when permit requirements become more stringent (and the discharger cannot meet them), I am not sure how backsliding concerns would be triggered. That section of the draft Resolution is addressing the circumstances when final limits in an existing permit are not being met, and those final limits are about to become interim limits in a reissued permit. Does the change in status from "final limit" to "interim limit" trigger a backsliding analysis? Some Regional Water Boards may not currently address anti-backsliding when interim limits are not retained in a reissued permit, believing that interim limits do not have the same weight as final limits and anti-backsliding analysis is not required. The Policy or the supporting documentation should explain the differences, in terms of enforceability and backsliding implications, between interim and final limits.