

## **ATTACHMENT TO RESOLUTION R1-2004-0011**

### **BASIN PLAN AMENDMENT: LANGUAGE AUTHORIZING THE INCLUSION OF COMPLIANCE SCHEDULES IN NPDES PERMITS**

(to be added to the *Water Quality Control Board, North Coast Region*, Chapters 3 and 4)

Add a new section entitled “Compliance with Water Quality Objectives” to the end of Chapter 3, “Water Quality Objectives”, of the *Water Quality Control Plan* as follows:

### *COMPLIANCE WITH WATER QUALITY OBJECTIVES*

*The Regional Water Board recognizes that immediate compliance with new effluent and/or receiving water limitations based on new, revised or newly interpreted water quality objectives or prohibitions adopted by the Regional Water Board or the State Water Resources Control Board, or with new, revised or newly interpreted water quality criteria promulgated by the U.S. Environmental Protection Agency (USEPA),<sup>1</sup> may not be technically and/or economically feasible<sup>2</sup> in all circumstances.*

*Where the RB determines that it is infeasible for an existing discharger<sup>3</sup> to comply with effluent limitations or where appropriate, receiving water limitations, specified to implement new, revised or newly interpreted water quality objectives, criteria or prohibitions; issuance of a schedule of compliance<sup>4</sup> may be appropriate.*

*Similarly, immediate compliance may not be technically and/or economically feasible for existing non-NPDES dischargers that, under new interpretation of law, are newly required to comply with new NPDES permitting requirements. Issuance of a schedule of compliance may be appropriate in these circumstances as well, to comply with effluent and/or receiving water limitations specified to implement objectives, criteria, or prohibitions that are adopted, revised, or reinterpreted after July 1, 1977, and that were not included in the non-NPDES permit.*

*Any schedule of compliance shall require achievement of the effluent limitations and/or receiving water limitations within the shortest feasible period of time, taking into account the factors identified in Chapter 4 for the implementation of schedules of compliance. All schedules of compliance will be limited to the time frames set out in Chapter 4.*

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<sup>1</sup> New, revised, or newly interpreted water quality objectives, criteria, or prohibitions means: 1) objectives as defined in Section 13050(h) of Porter-Cologne; 2) criteria as promulgated by the USEPA; or 3) prohibitions as defined in the *Water Quality Control Plan for the North Coast Region* that are adopted, revised, or newly interpreted after the effective date of this amendment. Objectives and criteria may be narrative or numeric.

<sup>2</sup> Technical and economic feasibility shall be determined consistent with State Board Resolution No. 92-49.

<sup>3</sup> Existing discharger as defined in the State “Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California,” (CTR-SIP) means: “any discharger (non-NPDES or NPDES) that is not a new discharger. An existing discharger generally includes an increasing discharger (i.e., an existing facility as of July 1, 1977, with treatment systems in place for its current discharge that is or will be expanding, upgrading, or modifying its existing permitted discharge after a new, revised, or newly interpreted water quality objective becomes applicable.”

<sup>4</sup> Schedule of compliance: as defined in Section 502 (17) of the CWA, means: “a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.”

Add a new section entitled “Schedules of Compliance” in Chapter 4, “Implementation Plans,” of the *Water Quality Control Plan* following the section titled “Waste Discharge Prohibitions” as follows:

### *SCHEDULES OF COMPLIANCE*

*The Regional Water Board may establish a Schedule of Compliance in an NPDES permit for a point source discharge under the following circumstances:*<sup>1, 2</sup>

- 1) Where an existing discharger<sup>3</sup> has demonstrated, to the Regional Water Board’s satisfaction, that it is infeasible to achieve immediate compliance with effluent and/or receiving water limitations specified to implement new, revised, or newly interpreted water quality objectives, criteria, or prohibitions<sup>4</sup>;*
- 2) Where a discharger currently operating<sup>5</sup> under a non-NPDES permit who -- under new interpretation of law, is newly required to comply with NPDES permitting requirements – demonstrates to the Regional Board’s satisfaction that it is infeasible to achieve immediate compliance with newly imposed effluent and/or receiving water limitations specified to implement objectives, criteria, or prohibitions adopted, revised, or reinterpreted after July 1, 1977, and that were not included in the non-NPDES permit; or*
- 3) Where a discharger is required to comply with TMDLs adopted as a single permitting action<sup>6</sup>, and either the TMDL Implementation Plan sets forth a schedule of compliance, or a specific Discharger demonstrates that it is infeasible for that Discharger to achieve immediate compliance with effluent and/or receiving water limits that are specified to implement new, revised, or newly interpreted objectives, criteria, or prohibitions.*

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<sup>1</sup> Schedules of compliance for CTR criteria are independently authorized and governed by 40 CFR 122.47 and 131.38, and the State “Policy for Implementation of Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California” (CTR-SIP). This amendment is intended to supplement, not supercede, these provisions required by the CTR-SIP. All CTR limits must be consistent with the CTR-SIP and applicable federal rules.

<sup>2</sup> Schedules of compliance for Non-NPDES Waste Discharge Requirements (WDRs) are also independently authorized by Porter Cologne, and will continue to be adopted on a case-by-case basis.

<sup>3</sup> Existing discharger is defined in the State “Policy for Implementation of Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California,” (CTR-SIP) “any discharger (non-NPDES or NPDES) that is not a new discharger. An existing discharger generally includes an increasing discharger (i.e., an existing facility as of July 1, 1977, with treatment systems in place for its current discharge that is or will be expanding, upgrading, or modifying its existing permitted discharge after a new, revised, or newly interpreted water quality objective becomes applicable.”

<sup>4</sup> New, revised, or newly interpreted water quality objectives, criteria, or prohibitions means: 1) objectives as defined in Section 13050(h) of Porter-Cologne; 2) criteria as promulgated by the USEPA; or 3) prohibitions as defined in the *Water Quality Control Plan for the North Coast Region* that are adopted, revised, or newly interpreted after the effective date of this amendment. Objectives and criteria may be narrative or numeric

<sup>5</sup> A discharger operating under a non-NPDES permit (WDRs) on or before approval of this amendment by USEPA.

<sup>6</sup> “Single permitting actions” means those where the Regional Board incorporates the requirements to implement a TMDL through one NPDES permit. These actions would not require a Basin Plan amendment, but would require a technical staff report to support the permit requirements and any permit specified compliance schedule. Furthermore, the USEPA would still be required to approve the TMDL under federal CWA Section 303(d).

*The schedule of compliance shall include a time schedule for completing specific actions (including interim effluent limits) that demonstrate reasonable progress toward attaining the effluent and/or receiving water limitations, water quality objectives, criteria, or prohibitions. The schedule of compliance shall contain interim limits and a final compliance date based on the shortest feasible time required to achieve compliance (determined by the Regional Water Board at a public hearing after considering the factors identified below).*

*Schedules of compliance in NPDES permits for existing point source dischargers shall be as short as feasible, but in no case exceed the following:*

*Up to five years from the date of permit issuance, re-issuance, or modification that establishes effluent and/or receiving water limitations specified to implement new, revised, or newly interpreted objectives, criteria, or prohibitions. A permittee can apply for up to a five-year extension, but only where the conditions of the schedule of compliance have been fully met, and sufficient progress toward achieving the objectives, criteria, or prohibitions has been documented.*

*In no case shall a schedule of compliance for these dischargers exceed ten years after adoption, revision, or reinterpretation of the objectives, criteria, or prohibitions.*

*Schedules of compliance in new NPDES permits for existing non-NPDES permittees that under new interpretation of law are newly required to comply with NPDES permitting requirements shall be as short as feasible but in no case exceed the following:*

*Up to five years from the date of issuance of the NPDES permit. A permittee can apply for up to a five-year extension, but only where the conditions of the schedule of compliance have been fully met, and sufficient progress toward achieving the objective, criterion, or prohibition has been documented.*

*In no case shall a schedule of compliance for these discharges exceed ten years from the effective date of the initial NPDES permit.*

*TMDL-derived effluent and/or receiving water limitations that are specified to implement new, revised, or newly interpreted water quality objectives, criteria, or prohibitions that are adopted as a single permitting action.*

*In this scenario, schedules of compliance shall require compliance in the shortest feasible period of time, but may extend beyond ten years from the date of permit issuance.*

*To document the need for and justify the duration of any such schedule of compliance, a discharger must submit the following information, at a minimum. The Regional Water Board will review the information submitted to determine if a schedule of compliance is appropriate.*

*For an existing discharger:*

- *A written request, and demonstration, with supporting data and analysis, that it is technically and/or economically infeasible<sup>7</sup> to achieve immediate compliance with newly adopted, revised or newly interpreted water quality objectives, criteria, or prohibitions.*

*For an existing non-NPDES discharger that, under new interpretation of law, is newly required to comply with NPDES permitting requirements:*

- *A written request and demonstration with supporting data and analysis that it is technically and/or economically infeasible to achieve immediate compliance with the new NPDES permitting requirements that are specified to implement objectives, criteria, or prohibitions adopted, revised, or reinterpreted after July 1, 1977, and which were not included in the non-NPDES permit.*

*For all applicants:*

- *Results of diligent efforts to quantify pollutant levels in the discharge and the sources of the pollutant in the waste stream.*
- *Documentation of source control efforts currently underway or completed, including compliance with any pollution prevention programs that have been established.*
- *A proposed schedule for additional source control measures or waste treatment.*
- *The highest discharge quality that is technically and economically feasible to achieve until final compliance is attained.*
- *A demonstration that the proposed schedule of compliance is as short as technically and economically feasible.*
- *Data demonstrating current treatment facility performance to compare against existing permit effluent limits, as necessary to determine which is the more stringent interim limit to apply if a schedule of compliance is granted.*
- *Additional information and analyses, to be determined by the Regional Water Board on a case-by-case basis.*

<sup>7</sup>Technical and economic feasibility shall be determined consistent with State Board Order 92-49.