STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING – DIVISION OF ADMINISTRATIVE SERVICES
OCTOBER 6, 2009

ITEM 4

SUBJECT

CONSIDERATION OF A RESOLUTION REVISING THE CORE REGULATORY WATER QUALITY FEE SCHEDULES CONTAINED IN TITLE 23, DIVISION 3, CHAPTER 9, ARTICLE 1, SECTION 2200 OF THE CALIFORNIA CODE OF REGULATIONS

DISCUSSION

Water Code Section 13260 requires each person who discharges waste or proposes to discharge waste that could affect the quality of the waters of the state to file a report of waste discharge with the appropriate regional water board and to pay an annual fee set by the State Water Board, the funds from which are deposited in the Waste Discharge Permit Fund (WDPF). Water Code section 13260 requires the State Water Board to adopt, by emergency regulations, an annual schedule of fees for persons discharging waste to the waters of the state.

Financial Condition of the Waste Discharge Permit Fund
Attachment 1 summarizes the WDPF fund condition. The FY 2009-10 beginning balance is $10.1 million, but it includes a projected $1.5 million in fines and penalty revenue not available for expenditure for core regulatory activities, which leaves an adjusted beginning balance of $8.6 million. Under the current fee schedule rates, total revenue is anticipated to be $76.2 million. Total expenditures, including a projected furlough savings totaling $8.2 million, are $70.9 million, resulting in a $5.3 million gain for the fiscal year with an ending balance of $13.9 million.

For FY 10-11, the projected beginning balance is $13.9 million. Under the current fee schedule rates, total revenue is anticipated to be $75.0 million with total estimated expenditures of $79.4 million, resulting in a $4.4 million deficit for the fiscal year and an ending balance of $9.4 million.

Proposed Fee Schedule Issues for FY 2009-10
The following three fee schedule issues are discussed below.

1. Options for revising the NPDES Program Fee Schedule

2. Adoption of a Fee for the WDR Landscape Irrigation General Permit

3. Analysis of providing a discount to Seasonally Operated Facilities

1. Options for revising the NPDES Program Fee Schedule:

As a result of the fee schedule changes in FY 2008-09 for the NPDES program, which removed the caps on flow, some dischargers received significant fee increases while other dischargers received significant fee decreases. For example, fees for a municipal facility with a flow of 15 mgd went from $50,000 in FY 07-08 to $9,265 in FY 08-09, an 82 percent decrease. In contrast, fees for a facility with flow of 2067 mgd went from $100,000 in FY 07-08 to $1,472,170 in FY 08-09, a 1,372 percent increase.

As the Table 1 below shows, the bulk of revenue collected in FY 2008-09 shifted to dischargers with flows greater than 100 mgd. In FY 07-08, dischargers with flows greater than 100 mgd generated 25.1 percent of total NPDES revenue. In FY 08-09, these large facilities generated 64.9 percent of total NPDES revenue while smaller facilities went from 49.2 percent of total NPDES revenue in FY 07-08 to 12.1 percent in FY 08-09.

This large shift in fiscal burden from one fee payer group to another warrants further review by the State Water Board. The State Water Board staff has developed three fee options for the NPDES program. All options are revenue neutral.

Option 1

Status Quo
Keep existing fee schedule from FY 2008-09. All dischargers would be assessed a base fee of $1,000 plus $551 multiplied by the permitted flow (units of mgd) with no cap level.

Option 2

Set a Cap on Flow
All dischargers would be assessed a base fee of $1,000 plus $1,768 multiplied by the permitted flow (units of mgd) up to a fixed cap of $250,000.

Option 3

Across the Board Increase
Increase all categories by 36 percent over the FY 2007-08 fee schedule. All dischargers would be assessed a base fee of $1,360 plus $4,648 multiplied by the permitted flow (units of mgd) with the following cap levels:

- $ 47,600 Industrial/Other
- $ 68,000 Municipal
- $136,000 Dischargers with flows greater than 100 mgd

Option Comparisons

Table 1

		Percentage of Total Revenue			
Category	Number	**FY 2007-08**	**Option 1** (Status Quo)	**Option 2** (Set a Cap on Flow)	**Option 3** (Across the Board Increase)
Flow > 100	30	25.1%	64.9%	45.3%	25.1%
Flow < 100	521	49.2%	12.1%	31.7%	49.2%
General Permit	1207	25.7%	23.0%	23.0%	25.7%

Table 2 summarizes the changes for each option comparing:

- FY 2007-08 Fee Schedule to the three options
- FY 2008-09 Fee Schedule to the three options

Table 2

	Fee Structure Comparison						
	FY 2007-08 to Options				FY 2008-09 to Options		
Option	Dischargers with Increase	Dischargers with Decrease or Same Rate	Fee Range **CHANGE**		Dischargers with Increase	Dischargers with Decrease or Same Rate	Fee Range **CHANGE**
1	26	525	($43,900) - $1,372,170		No Change	No Change	No Change
2	61	490	($22,480) - $150,000		485	66	($1,222,170) - $156,983
3	551	0	$360 - $36,000		529	22	($1,336,170) - $79,900

The following charts illustrate all three options:

Figure 1

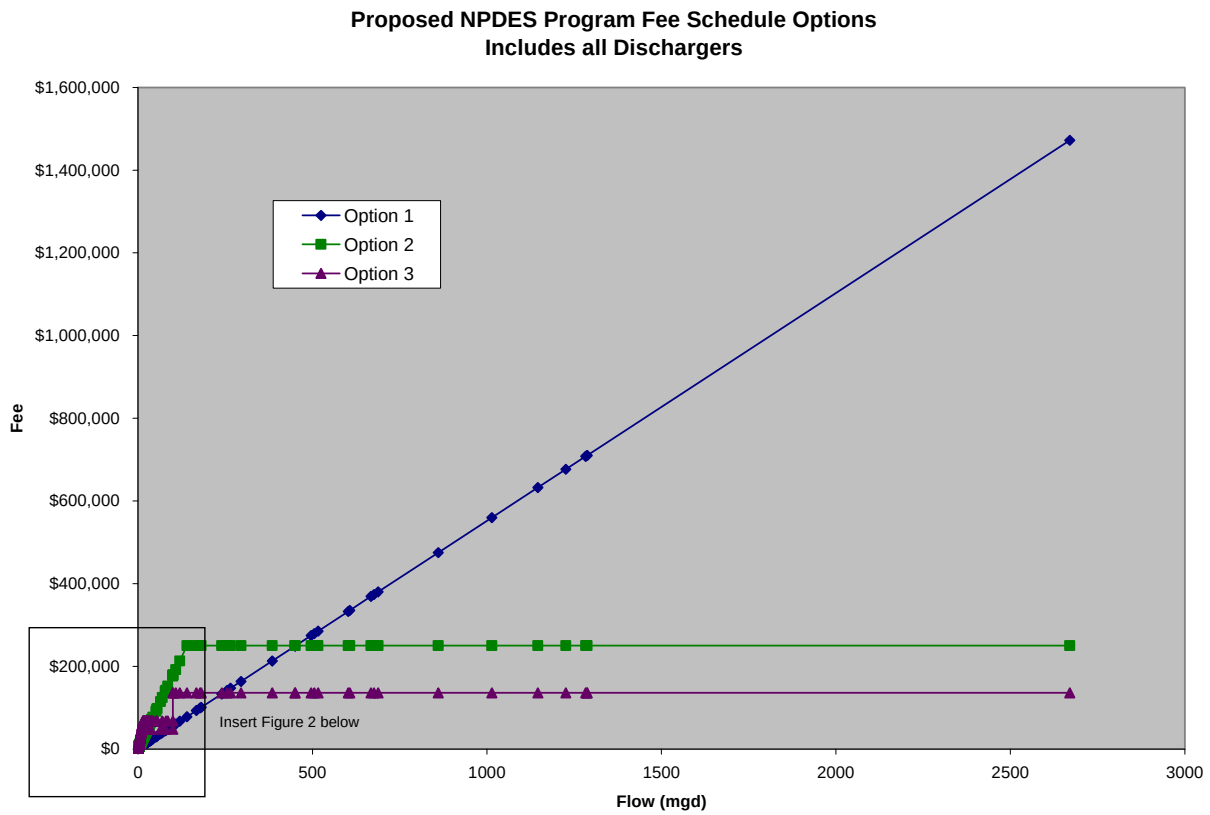
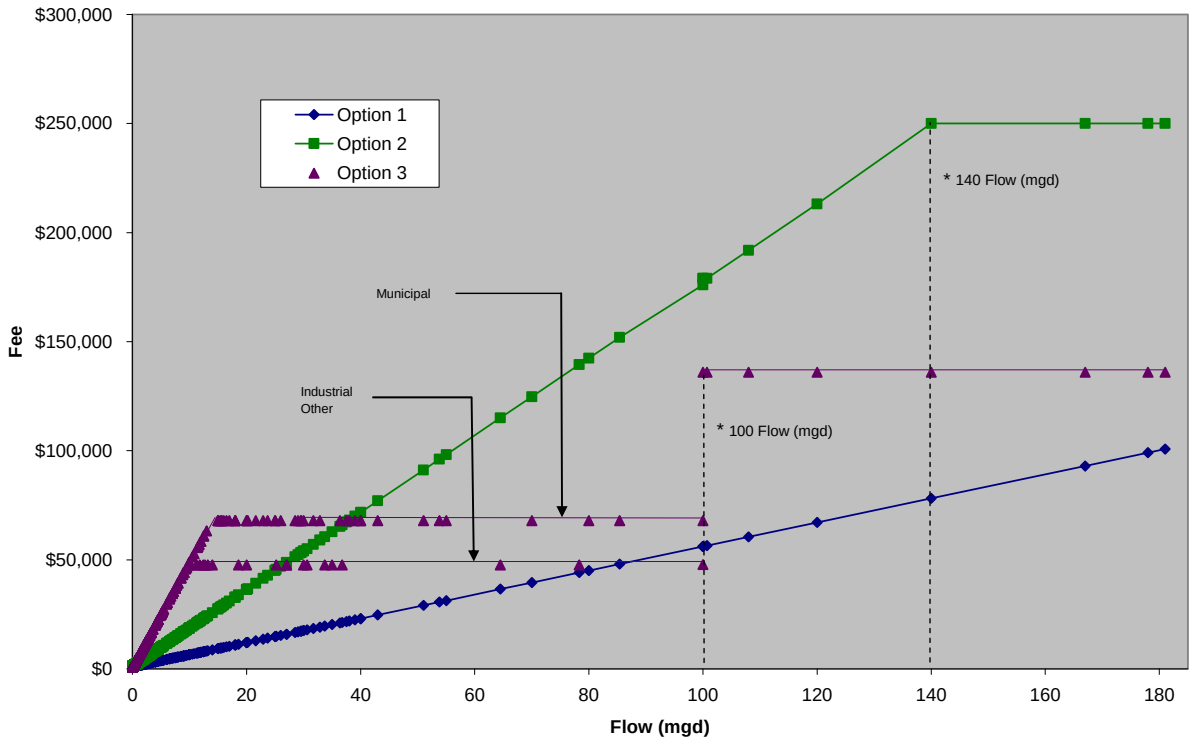


Figure 2

Proposed NPDES Program Fee Schedule Options
Excludes Dischargers with Flows (mgd) Greater Than 185



* Under Option 2, a discharger with a flow greater than140 mgd will pay the cap of $250,000.

Furlough Savings for the NPDES Program

State Water Board staff has identified approximately $1.9 million in salary savings for the NPDES program for FY 09-10 that will accrue from the three day per month furlough program mandated by Executive Order S-13-09. This furlough salary savings could be used to offset a portion of any increase dischargers may experience this year as a result of changes to the fee schedules. Since most dischargers have already established their annual budgets, any adjustments that increase fees after that point can have a significant financial impact on them. Using the furlough savings will mitigate this impact and allow them to plan for future fee increases.

Recommendation

The State Water Board staff recommends adopting Option 2. All dischargers would be assessed a base fee of $1,000 plus $1,768 multiplied by the permitted flow (units of mgd) with a fixed cap of $250,000. By reestablishing a cap on fees, this option will better balance program costs among the three categories of dischargers so that one group does not bear a disproportionate share of costs while still retaining the basic structure and simplicity of changes adopted in FY 2008-09. As Table 1 above illustrates, Option 2 would lower the amount of total revenue generated by facilities with flows greater than 100 mgd from 64.9 percent to 45.3 percent while raising the amount generated by facilities with flows less than 100 mgd from 12.1 percent to 31.7 percent**.** To mitigate the impact of the proposed increase on dischargers, some of whose fees may increase substantially, State Water Board staff recommends using the $1.9 million in furlough salary savings to provide a one-time 35 percent credit for FY 09-10 to dischargers with flows that are

less than 140 mgd. The credit will be calculated based on the flow portion of the fee prior to any applicable surcharges.

2. Adoption of a Fee for the WDR Landscape Irrigation General Permit:

AB 1481 (Ch. 535, Statutes of 2007) required the State Water Board to adopt a General Permit for landscape irrigation uses of recycled water. On July 21, 2009, the State Water Board adopted the Landscape Irrigation General Permit as WQO No. 2009-0006-DWQ. The General Permit is an add-on permit that does not supersede the wastewater treatment plant's existing waste discharge requirements or NPDES permit. However, as required by AB 1481, other requirements that address the landscape irrigation uses of recycled water become null and void whenever the landscape irrigation use becomes covered by the General Permit. This prevents the occurrence of duplicative requirements for the same recycled water use project. The intent of the General Permit is to encourage the use of recycled water for landscape irrigation in a manner that is protective of water quality.

AB 1481 also required the State Water Board to establish a reasonable schedule of fees to reimburse the costs it incurs in implementing, developing, and administering the General Permit. Although the ongoing costs associated with administering the General Permit are difficult to determine until more is known about the number of potential enrollees in the General Permit, staff estimates that a fee in the range of $2,000 to $4,000 should provide sufficient revenue to cover ongoing permit costs. Staff recommends that a single, flat fee be used for all enrollees under the General Permit. This would simplify the process of enrollment under the General Permit in support of the overall goal of increasing the use of recycled water. Staff considered two general approaches for establishing the amount of the flat fee. First, the fee regulations could be revised to add a separate fee specifically designated for the General Permit. Second, the flat fee could be based on an existing fee category, i.e., a combined threat to water quality (TTWQ) and complexity (CPLX).

Recommendation

The State Water Board Staff recommends adopting TTWQ/CPLX rating 3B for enrollees under the new WDR Landscape Irrigation General Permit. Under the current fee schedule, this would amount to an annual fee of $2,520.

3. Analysis of providing a discount to Seasonally Operated Facilities:

The State Water Board staff was requested by the fee stakeholder group to analyze providing a discount to seasonally operated facilities. Seasonally operated facilities are facilities that discharge only part of the year, usually because of the nature of the business. For the purpose of the analysis, State Water Board staff assumed a 25 percent discount.

Facility Identification and Fiscal Impact

The State and Regional Water Quality Control Board staff indentified 366 WDR seasonally operated facilities in the following categories:

- **Packers/Processors (47)** – These facilities operate part-time during the year based on the seasonal harvest of vegetables, fruits, and nuts.
- **Vineyards (148)** - These facilities discharge during the seasonal process of crushing grapes.
- **Parks and Camps (171)** – These facilities mainly discharge during the dry season and do very little discharging during the winter months.

In FY 2008-09, the State Water Board invoiced the above facilities for approximately $1.4 million. If each facility received a 25 percent discount, it would result in an estimated $362,000 loss in revenue. Since the Water Board must keep revenue in line with expenditures, any fee reductions to one group of dischargers would need to be offset by increased fees to other dischargers. This would result in an approximately two percent increase to all WDR fee categories. This number could increase if any other seasonally operated facilities are identified.

Table 3 below depicts the changes required to increase all categories by two percent to allow for a 25 percent discount for seasonally operated facilities.

Table 3

	2% Base Fee Increase			
T/C	Number of Dischargers	Base Fee	2% Base Fee Increase	Proposed Yearly Base Fee w/2% Increase
1/A	35	$58,520	$1,170	$59,690
1/B	14	$36,960	$739	$37,699
1/C	13	$19,943	$398	$20,341
2/A	140	$13,321	$266	$13,587
2/B	749	$8,008	$160	$8,168
2/C	457	$6,006	$120	$6,126
3/A	217	$4,732	$94	$4,826
3/B	544	$2,520	$50	$2,570
3/C	2431	$1,120	$22	$1,142
	Totals			
	4600	$18,553,017	**$369,470**	$18,922,487

	25% Base Fee Seasonal Discount			
T/C	Number of Seasonal Dischargers	Base Fee	25% Base Fee Discount	Proposed Yearly Base Fee w/25% Discount
1/A	0	$59,690	$14,922	$44,768
1/B	0	$37,699	$9,425	$28,274
1/C	0	$20,341	$5,085	$15,256
2/A	17	$13,587	$3,397	$10,190
2/B	83	$8,168	$2,042	$6,126
2/C	22	$6,126	$1,531	$4,595
3/A	1	$4,826	$1,206	$3,620
3/B	85	$2,570	$642	$1,928
3/C	158	$1,142	$285	$857
	Totals			
	366	$1,447,407	**$361,723**	$1,085,684

Recommendation

The State Water Board staff recommends not amending the fee regulations to provide a discount for seasonally operated facilities. The existing WDR fee assessments are based on the threat to water quality (TTWQ) of a discharge and the complexity (CPLX) of a discharge. This TTWQ/CPLX rating, which ranges from 1A to 3C and is assigned by the regional boards, already accounts for factors like seasonality of the discharge and the difficulty of developing and monitoring the permit. However, State Water Board staff recommends adding language to clarify

that duration, frequency, seasonality, and other factors that might limit the impact of a discharge should be considered by the regional board when assigning TTWQ/CPLX category ratings.

POLICY ISSUE

Should the State Water Board consider adopting a resolution amending the annual fee schedules as proposed by staff?

FISCAL IMPACT

All proposed fee schedule changes are revenue neutral, so there is no net fiscal impact. The proposed changes do impact individual dischargers as some rates will be increased and others will be decreased.

REGIONAL BOARD IMPACT

1. There is no Regional Board impact for revising the NPDES Program Fee Schedule.

2. There would be minimal impact for the Regional Boards to assist in efforts with State Board staff to implement the General Permit fee.

3. The Regional Boards may be impacted if they are requested by the dischargers to reassess the TTWQ/CPLX permit ratings.

STAFF RECOMMENDATION

That the State Water Board approves the resolution to adopt emergency regulations to change the current annual fee schedules as proposed by staff.

D R A F T

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2009-

ADOPTING EMERGENCY REGULATIONS REVISING THE CORE REGULATORY WATER QUALITY FEE SCHEDULES CONTAINED IN TITLE 23, DIVISION 3, CHAPTER 9, ARTICLE 1, SECTION 2200 OF THE CALIFORNIA CODE OF REGULATIONS

WHEREAS:

1. Water Code Section 13260(d) requires each person for whom waste discharge requirements are issued to pay an annual fee to the State Water Board.

2. Water Code Section 13260(f) requires the State Water Board to adopt a schedule of fees by emergency regulation.

3. Water Code Section 13260(f) requires fees to be adjusted annually to conform to the revenue levels set forth in the Budget Act for these activities.

4. State Water Board staff prepared recommended changes to the annual fee schedule contained in current regulation to implement the State Budget Act requirements.

THEREFORE BE IT RESOLVED THAT:

The State Water Board adopts emergency regulations approving the revisions to Title 23, Division 3, Chapter 9, Article 1, Section 2200 of the California Code of Regulations to implement the provisions of the 2009 State Budget Act pursuant to the provisions of Water Code Section 13260(f) (annual fee schedule).

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 6, 2009.

_____
Jeanine Townsend
Clerk to the Board