

NPDES FEE STAKEHOLDER WORKGROUP REPORT

Submitted to the State Water Resources Control Board

July 6, 2010

Introduction

During consideration of proposed fee regulations for fiscal year 2009-10, the State Water Resources Control Board (State Water Board) directed its staff to convene a stakeholder workgroup to review the NPDES fee structure and provide recommendations to the State Water Board for revisions to the fee regulations that could be implemented beginning the next fiscal year. The stakeholder workgroup was formed in the fall of 2009 and held its first meeting in December 2009. Various members of the workgroup have met frequently in person and by conference call over the past seven months. The workgroup members are:

Michael Abramson	Napa Sanitation District
Kevin Buchan/ David Arrieta	Western States Petroleum Association
Julie Gill	AES
Sharon Green	Los Angeles County Sanitation Districts
Jesus Arredondo	Dynegy
Staci Heaton	Regional Council of Rural Counties
Roberta Larson	California Association of Sanitation Agencies
Robert Lucas	California Council for Environmental & Economic Balance
Valerie Nera	California Chamber of Commerce
Linda Sheehan	California Coastkeeper Alliance
Debbie Webster	Central Valley Clean Water Association

Workgroup Process and Agreements

An initial task for the workgroup was to review and understand the available information regarding revenue needs, fee history and workload. With this background, the Workgroup developed guiding principles regarding the attributes of an equitable, feasible and sustainable fee structure before exploring specific fee scenarios.

Guiding Principles:

1. Widely fluctuating annual fees for NPDES dischargers are undesirable because of the difficulty in budgeting and raising revenues.

2. The Workgroup will utilize the State Water Board's 2010-2011 revenue requirement projections as the target for the Workgroup's product and will not review in detail the assumptions driving the projections or their appropriateness at this time. (This is independent of any advocacy positions taken by workgroup members outside of this group regarding the budget.)
3. The Workgroup does not support or expect that fees a specific discharger pays will be exactly proportional to the effort spent by the State Water Board staff on that discharger.
4. The goal of the Workgroup is to develop a methodology that is a fair and stable allocation of the current and near term future revenue requirements.
5. A "stable allocation method" means that the fees a discharger pays will not have wide swings from year-to-year.
6. The Workgroup will strive to have its recommendations developed by June 2010 in order to allow them to be implemented for FY 10/11, with the understanding that the final revenue target may change depending upon the adopted State budget.
7. The Workgroup recognizes that there are a few basic discharger types for which approximate broad allocations of the revenue requirement can be stated.
8. The Workgroup will establish a fair and stable methodology for determining the approximate share of the fee revenue to be derived from each of the basic discharger types.
9. Fees should not be a primary mechanism to promote or discourage policy.

Sector Approach

The Workgroup discussed in some detail the merits and feasibility of alternative fee structures. These ranged from a "fee for service" concept, in which a fee is based on the cost of providing services to the specific fee payer, to a regulatory fee in which the fee levels are set to account for threat to water quality and other similar factors. Consistent with the guiding principles, the Workgroup initially agreed that the best approach would be a fee structure that assesses each member of a regulated sector a fee based on that sector's portion of the approved fee revenue target roughly proportional to the share of the State Water Board's workload associated with regulating that sector. Four sectors were used for this allocation process:

- Municipal (publicly owned and domestic treatment works)
- Industrial
- SEPP (Steam Electric Power Plants)
- General (*de minimis* discharges such as utility vaults, dewatering, etc.)

The Workgroup understood that a detailed accounting of actual expenditures for each and every permittee was not realistic or appropriate in this context, and that a true fee for service could not be implemented within the constraints of the program since fee revenue must be collected during the fiscal year, and it is not feasible to wait until after work has been done. Instead, utilizing the most recent analysis of program staffing and funding needs, a 2001 Statewide Needs Analysis Matrix for the NPDES program, the Workgroup worked with State Water Board staff to allocate workloads to each sector. The matrix identifies 42 types of tasks performed by the State and Regional Water Boards to implement the NPDES program, such as permit issuance, inspections, enforcement and so on. State Water Board staff allocated workload between Major dischargers (greater than 1 mgd) and Minor dischargers (less than 1 mgd) and three categories of General permits. The number of hours required to complete each of the enumerated tasks—for example, issuance of a revised permit for a major industrial discharge or performing a sampling inspection for a minor POTW--was used as a basis for the initial allocation of workload among the four sectors.

The results of this analysis are summarized here:

Sector	% of NPDES Fee Revenue
Municipal	42%
Industrial	29%
SEPP	4% ¹
General	25%

Unlike the Fiscal Year 2009-10 fee schedule, which does not differentiate by the type of facility being permitted, the “sector approach” would establish separate fee schedules for industry, SEPPs, municipal, and General permittees. This has the advantages of allowing each sector to select an approach that reflects the way in which its facilities are operated (e.g. an approach based on permitted flow may work well for one sector but not another; some sectors are more diverse than others in terms of the size and variety of activities permitted) as well as to link the percentage of the fee burden to the portion of the Water

¹ In recognition of the impact of the fee changes on the industrial sector fee payers, the SEPP representatives have agreed to pay a greater percentage of the total revenue target than would otherwise be allocated to their sector. Under the most recent proposal, the SEPPs agreed to contribute an additional 8%, equivalent to \$100,000 per permitted facility in FY 2010-11, which would be used to offset some of the revenue that would otherwise be contributed by the industrial sector. The SEPP contribution above the 4% sector allocation would continue in subsequent years, though the total revenue will be reduced as SEPP facilities are taken off line and no longer require permits.

Board workload that each sector generates—bringing the fees a little closer to a fee for service than the current or previous fee structures.

The Workgroup has not yet reached consensus on the Sector Approach. As a result of the sector approach, the fees for some discharger types—in particular, SEPPs—will decrease significantly from current levels, while others, such as industrial permittees, will face large increases. Some members of the Workgroup are most concerned about long-term stability and equity with regard to fees, and believe that the sector approach has a sound basis that will result in fees with a reasonable, though admittedly not precise, relationship to the State Water Board’s costs of implementing the program. Other members of the Workgroup are concerned about the ever increasing fee burden that permittees are being asked to shoulder in these difficult times, resulting in fees that are 200 to 300 percent higher than fees paid in prior years. For example, the revenue target under the proposed state budget is approximately \$20.7 million, which is a 22% increase over the \$17 million target for FY 2009-10.² These concerns have prevented the Workgroup from reaching consensus to date, though discussions continue.

Conclusion

The Workgroup has found it challenging to develop a fee structure that satisfies the principles of stability, predictability, equity and feasibility. After many months of effort, the Workgroup settled on the sector approach, which best meets these goals. However, agreement has not yet been reached due to the disparate short-term impact of the implementation of the approach across the sectors and the amount of the fees that would result for specific categories of dischargers.

² This total does not reflect the one time fee discount of approximately \$1.9 million due to furlough savings.