

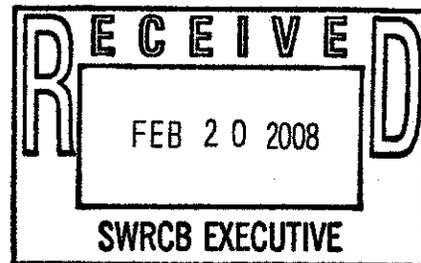


## California Stormwater Quality Association™

*Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation*

February 20, 2008

Jeanine Townsend, Clerk of the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814



**Subject: Comment Letter – NPDES Compliance Schedules Policy**

Dear Ms. Townsend:

The California Stormwater Quality Association (CASQA) would like to take this opportunity to provide comments regarding the Proposed Statewide Policy on Compliance Schedules in National Pollutant Discharge Elimination System Permits (Policy). CASQA recognizes that the Policy is primarily directed at traditional point source dischargers (i.e., wastewater permittees) and not municipal stormwater permittees. However, our membership includes industrial permittees that are subject to compliance with Section 301 of the Clean Water Act (CWA) and as a result would be covered by the Policy.

CASQA was formed in 1989 to recommend approaches to the State Water Resources Control Board (State Water Board) for stormwater quality management in California and, in particular, the development and implementation of stormwater permitting processes. CASQA is composed of stormwater quality management organizations and individuals, including cities, counties, special districts, industries, and consulting firms throughout the state. Our membership provides stormwater quality management services to over 26 million people in California and includes most every Phase I and many Phase II municipal programs in the State.

In general, CASQA supports the intent of the Policy, which is to provide more consistent application of the NPDES permit program between the Regional Water Boards. Furthermore we strongly support the use of compliance schedules as an effective tool to provide permittees with sufficient time to bring their facility/operations into compliance with water quality based limitations. While CASQA supports the efforts to develop the Policy, there are some areas that we suggest additional clarification. These are outlined below in the form of general and specific comments.

### **I. GENERAL COMMENTS**

The Policy as currently crafted does not apply to the municipal stormwater permits (see page 56 of the Staff Report). However, the Policy does apply to all permits required to comply with CWA §301 and, although primarily written for application to wastewater permits, the Policy does include industrial stormwater permits, which includes the General Industrial Permit and General Construction Permit. The purpose of the Policy is to establish statewide uniformity in authorizing

compliance schedules and provide consistency in the implementation of these provisions in NPDES permits in California.

**Recommendation:**

The State Water Board should upon the adoption of this Policy consider the complex issue of shaping a compliance schedule policy to address municipal stormwater management and, in the interim, consistent with Orders WQ 99-05 and 2001-15, through an addition to this Policy or otherwise, expressly authorize the continued use of the iterative process in addressing water quality standards compliance in the context of MS4 permits unless a superseding pollutant-specific compliance schedule has been adopted in a TMDL.

**II. SPECIFIC COMMENTS**

**1. The Policy will allow compliance schedules only under very limited circumstances.**

Pursuant to Section 2. Scope and Applicability, compliance schedules are limited to permits adopted or modified after the effective date of the Policy in situations where design, construction, or other major programs are necessary to comply with effluent limits based on **new, revised, or newly interpreted water quality standards**. The Policy defines "newly interpreted ... standard" as being limited to narrative standards that based on the interpretation during permit renewal result in more stringent effluent limits than in the prior permit.

The section goes on to identify where compliance schedules would not be available including:

- Permits for new dischargers.
- Permits with water quality limits based on the National Toxics Rule (NTR).
- Permits implementing criteria promulgated in the California Toxics Rule (CTR). Compliance schedules for existing CTR criteria are authorized only under the State Implementation Plan (SIP). However, the Policy authorizes compliance schedules for permit limitations implementing CTR criteria that are revised by USEPA after the effective date of this Policy.
- Permit limitations implementing new, revised, or newly interpreted water quality standards that are less stringent than water quality standards previously in effect.
- Permits where Regional Water Board compliance schedule policies were previously adopted, in which case, schedules are allowable to comply with standards adopted or revised after the date of those policies

For water bodies with TMDLs, the Policy would allow permit compliance schedules for achievement of any criteria consistent with existing TMDLs, and would allow longer than 5 to 10 year compliance schedules for compliance with newly adopted TMDLs. Pursuant to the Policy, compliance schedules would not be allowed for compliance with NTR or CTR waste load allocations (WLAs) or load allocations (LAs). Thus, there are few situations where compliance schedules would be allowed in permits necessary to comply with TMDL requirements. However, to the extent the TMDL addresses new, revised, or newly interpreted criteria as defined and consistent with the qualifications in Section 2 of the Policy, compliance schedules consistent with the TMDL, i.e., of whatever length would be allowable.

## CASQA comments on Proposed Statewide Policy on Compliance Schedules in NPDES Permits

Since very few standards would qualify as new or revised under the Policy's definition, it is anticipated that the Policy would allow compliance schedules only in the case of new interpretation of narrative standards. Thus, except for CTR criteria, no compliance schedules would be allowed for existing numeric objectives, except in very few cases. It follows that compliance schedules will primarily be contained in Cease and Desist or Time Schedule Orders, subjecting permittees to potential citizen suits and, after 5 years maximum, mandatory minimum penalties. Thus, in total this draft policy does little to provide for a constructive and effective statewide policy.

### **Recommendation:**

- Modify the Policy to allow permit compliance schedules whenever a new effluent limit that is more stringent than the prior limit is placed into the permit, and for any water quality standards, irrespective of when they were adopted and including the CTR and NTR criteria.
- Modify the definition for **newly interpreted water quality standards** to include all water quality objectives not just narrative water quality objectives, including but not limited to basin plan, NTR and CTR objectives.

### **2. When allowable, the length of compliance schedules is unreasonably restricted.**

Compliance schedules are limited to the time necessary to design and construct facilities with a maximum of five years, except under limited circumstances (e.g., natural disaster, court ruling, etc.) or where TMDLs have been completed with longer compliance schedules. Compliance schedules do not allow time to conduct studies to either adjust the effluent limits (monitoring, dilution, translator studies) or the standards (UAAs, WERs, other SSOs). Exceptions are granted only where TMDL implementation plans provide for longer compliance schedules.

### **Recommendation:**

- Remove the constraints on the length of compliance schedules, including the provision that they be solely for design and construction and be limited to 5 years maximum.
- Provide that this Policy supersedes the SIP compliance schedule policy and allows compliance schedules for both CTR and NTR criteria.

In closing, we hope that our comments will assist you in identifying additional improvements to the Proposed Statewide Policy on Compliance Schedules in National Pollutant Discharge Elimination System Permits. Please feel free to contact me at (714) 567-6360 or Geoff Brosseau, our Executive Director at (650) 365-8620 if you have any questions or would like to discuss this further.

Very truly yours,



Chris Crompton, Chair  
California Stormwater Quality Association

CASQA comments on Proposed Statewide Policy on Compliance Schedules in NPDES Permits

cc: Tam Doduc, Chair, State Water Board  
Dorothy Rice, Executive Director, State Water Board  
Jonathan Bishop, Chief Deputy Director, State Water Board  
Bruce Fujimoto, Manager – Stormwater Section, State Water Board  
CASQA Executive Program Committee  
CASQA Board of Directors