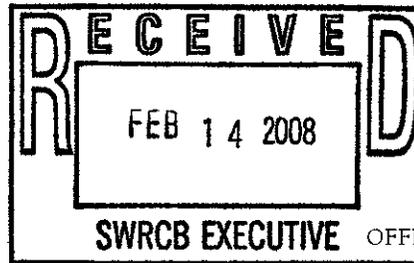


February 5, 2008

Ms. Jeanine Townsend
Acting Clerk to the Board
State Water Resources Control Board
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Sacramento, CA 95814

Sent via email to: commentletters@waterboards.ca.gov



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Subject: Comment Letter – Draft Compliance Schedule Policy

Dear Madam Clerk:

The City of Santa Rosa ("City") is pleased to provide these comments on the State Board's draft "Compliance Schedule Policy for NPDES Permits" issued December 11, 2007 ("Policy"). The City operates the Laguna Subregional Water Reclamation System pursuant to a NPDES permit issued by the North Coast Regional Board, and is thus extremely interested in the proposed Policy.

As you know, the North Coast Regional Board recently adopted (and the State Board and US EPA approved) a Basin Plan Amendment to authorize that Regional Board to issue, in limited circumstances, compliance schedules for permit holders to achieve compliance with new or newly-revised or interpreted water quality standards. The City was very closely involved in the public process that lead up to the North Coast Regional Board's adoption of that Basin Plan amendment and dedicated substantial resources toward that end. The Regional Board's action adopting that Basin Plan amendment occurred only after many hundreds of hours of work on the part of many, many stakeholders and Regional Board staff. Needless to say, the City would have serious concerns about any State Board policy that would nullify that carefully crafted - - - and US EPA approved - - - approach to authorizing compliance schedules.

- *Santa Rosa Supports "Alternative 1b" as Described in the FED.* According to the "Draft Staff Report" dated December 4, 2007 ("Staff Report"), the "need" for the State Board Compliance Policy is to have "statewide uniform compliance schedule provisions and consistency in implementation of these provisions in the state's NPDES permit program." Moreover, the stated purpose of the Policy is "to make better use of both stakeholder and [Water Boards] resources by providing clear guidance on the appropriate use of compliance schedules in NPDES permits." (Staff Report at p. 2.)

As a general proposition, the City supports statewide consistency in the implementation of water quality policies, particularly as related to NPDES permit issues. Moreover, the City supports efforts to make the entire water quality regulatory process more efficient, as well as fair. However, in the present situation, currently six of the nine

Regional Boards have already adopted Basin Plan provisions that authorize issuance of compliance schedules in NPDES permits. As such, the City questions whether adopting an entirely new statewide Compliance Schedule Policy is truly efficient since it will merely supplant all of the work that each of these Regional Boards have already done.

The City recognizes that there are various aspects of the six Regional Board compliance schedule provisions which are different from one another. However, the single-most important element of consistency among these various Basin Plan provisions is that they all meet the Federal Regulations set forth in 40 CFR §122.47, evidenced by the fact that US EPA has already approved those Basin Plans, excepting the San Diego Regional Board's amendment, which is still awaiting US EPA action. As long as these existing Basin Plan provisions meet federal requirements, the City questions the need to overlay a new and, in most instances, more restrictive, compliance schedule policy.

"Alternative 1b" of the Draft Staff Report and FED is to "Adopt a compliance schedule policy that only applies to the Regions *without* explicit NPDES compliance schedule authorization in their Basin Plan." (See, Staff Report at p. 41.) The City of Santa Rosa supports "Alternative 1b" because it would not affect the process of administering compliance schedule requests in those Regions where Basin Plan language already exists.

- *Compliance Schedules May Only Be Granted to Allow Construction of Treatment Facilities.* According to the proposed Policy, "It is the intent of the State Water Board that compliance schedules for NPDES permits only be granted when the discharger must design and construct facilities or implement new or significantly expanded programs and secure financing, if necessary, to support these activities in order to comply with permit limitations..." (Policy, ¶9, p. 2.) Further, the proposed Policy provides that a Regional Board may issue a compliance schedule only where the Regional Board determines that the discharger must design and construct facilities or implement new or significantly expanded programs to comply with a permit limit. (Policy, ¶2, p. 3.)

By its terms, the proposed Policy would *only* allow compliance schedules where facility construction or other significant program implementation is necessary to achieve compliance with new permit effluent limits tied to new or newly interpreted water quality standards. This restriction would be a substantial change to current North Coast Regional Board policy, which merely requires a discharger to demonstrate "infeasibility" in achieving immediate compliance.

Specifically, the Policy would prohibit issuance of compliance schedules to allow alternative compliance strategies such as development of TMDLs, site specific objectives, water effects ratio analyses and similar approaches that better define water quality standards for a specific water body.

Why this is important to the citizens of Santa Rosa is highlighted in the following example. Assume that the City's discharge receiving water becomes newly listed for some pollutant, yet the Regional Board determines that no TMDL for the pollutant will be completed within twelve years. However, the Regional Board completes a "reasonable potential analysis" and determines on that basis that Santa Rosa must receive an effluent limitation for the pollutant. Once the TMDL is completed for the pollutant, the City's waste load allocation could potentially be 50-80% *higher* than the effluent limit. In practical terms, building new treatment processes in order for Santa Rosa to achieve the new effluent limit could cost hundreds of millions of dollars, require untold amounts of additional energy, and produce substantial greenhouse gas emissions. Yet, if a compliance schedule were granted for a reasonable period of time within which to complete the TMDL, the City could both comply with the new effluent limit as well as save millions of dollars of taxpayer dollars, millions of Kilowatt hours of energy, and avoid the needless discharge of thousands or millions of tons of greenhouse gases.

The City does not understand why the State Board would favor a statewide policy that does not encourage non-construction, alternative means of compliance with water quality standards, particularly at a time when state and local budgets are exacerbated and reduction of greenhouse gas emissions is of paramount focus and concern.

- *Compliance Schedules Are Limited to Five Years.* Unlike the North Coast Basin Plan that potentially allows for ten-year compliance schedules (that is, five years plus an additional five years if certain conditions are met), the proposed State Board Policy limits compliance schedules to no more than five years, with two extremely limited exceptions. The first exception allows an additional five-year term, but only if "unforeseen circumstances, beyond the control of the discharger" precludes compliance within the first five years. "Unforeseen circumstances" are defined by example in the proposed Policy to include natural disasters, failure of a new treatment system to function as expected, or a court ruling arising from a third-party lawsuit.

One very significant problem with this five-year maximum time period is that it does not realistically allow for sufficient time to design, permit, finance and construct new or expanded treatment facilities to meet potentially more restrictive effluent limits. Several years ago, the State Board Division of Clean Water Programs determined that the entire timeline for a POTW to process a major treatment plant upgrade or construction project (including the SRF application, project design and environmental review, contracting, construction, and operations inspection and compliance certification) was approximately 11.8 years. (See, State Board SRF Loan Program Flow Chart, September 14, 1994.) Thus, by the State Board's own calculations, constructing facilities to achieve compliance with a new standard simply cannot be completed within ten years, let alone five. For this reason alone, the State Board should revise the allowed time for compliance schedules to coincide with the practical limitations faced by POTWs.

Another important reason that the State Board should change the allowable compliance schedule period is that neither the Federal Clean Water Act nor federal regulations limit the duration of compliance schedules. (Staff Report at p. 7.) In fact, the only things that federal regulations require are: (1) the compliance schedule period to meet the new standard is "as soon as possible"; and (2) if the compliance period exceeds one year, then the permit must "set forth interim requirements and the dates for their achievement." (See, 40 CFR §122.47(a)(1) and (3).) Indeed, US EPA Region IX recently approved the North Coast Basin Plan amendment that allows a maximum compliance schedule period of ten years. (See, Letter to Tom Howard, Acting Executive Director, SWRCB from Alexis Strauss, Director, Water Division, US EPA Region IX, November 29, 2006.)

"Alternative 3c" would allow compliance schedule periods of up to fifteen years. (See, Staff Report at p. 50.) The State Board staff rejected Alternative 3c on the grounds that fifteen years "may be so long as to be pointless as a deadline." However, this time period more closely approximates the 12-13 year timeframe within which to design, perform CEQA review, fund, construct and test new or substantially expanded treatment facilities. As such, Santa Rosa supports adoption of Alternative 3c.

- *Compliance Schedules are Not Allowed for CTR-Based Limits.* The Policy specifically excludes compliance schedules for permit limits that implement water quality standards adopted under the California Toxics Rule, and notes that compliance schedules for existing CTR-based limits are authorized only under the State Implementation Plan adopted by the State Board in 2000. (See, Policy ¶2.c, at p. 3.) However, CTR-based compliance schedules are limited by operation of the SIP to May 18, 2010.

A potential problem exists for a discharger who may not currently show "reasonable potential" for a given CTR pollutant in its wastestream but whom, for whatever reason, shows reasonable potential for that CTR pollutant after May 18, 2010, and thus receives an effluent limit. Under the SIP, the discharger would arguably not be entitled to a compliance schedule. Under the State Board's proposed Policy, these CTR-based effluent limits would also not be entitled to a compliance schedule. As such, the discharger would be required to comply immediately with the effluent, which may be technologically infeasible to do. The proposed Policy makes no allowance for such a situation.

There is a possible solution to this dilemma, short of adding an explicit provision in the proposed Policy to address it directly. The proposed Policy defines "newly interpreted water quality standard" to mean:

"a narrative water quality objective that, when interpreted during NPDES permit development . . . to determine the permit limitations necessary to implement the objective, results in a numeric permit limitation more stringent than

the limit in the prior NPDES permit issued to the discharger." (Policy ¶1.e, at p. 3.)

The possible solution to the dilemma described above would be to revise the definition as indicated in the redline/strikeout version below:

"a narrative or numeric water quality objective that, when interpreted during NPDES permit development . . . to determine the permit limitations necessary to implement the objective, results in a new or more stringent numeric permit limitation ~~more stringent~~ than the limit in the prior NPDES permit issued to the discharger."

- *The Proposed Policy Would Supersede All Basin Plans, Except for Compliance Schedules Allowed in TMDLs Already Adopted.* The intent of this provision is to preserve compliance schedule provisions contained in TMDLs already adopted by Regional Boards and in effect on the date the proposed Policy is adopted. (See, Policy ¶10, at p. 6..) However, this explicit "carve-out" for compliance periods contained in adopted TMDLs calls into question whether compliance periods contained in already-adopted NPDES permits (and approved by the State Board and US EPA) would be superseded by the proposed Policy. Arguably, a third party environmental NGO party could request that such permits be re-opened and modified to comport with the proposed Policy, or seek to have any conflicting permits invalidated. The City requests that this provision be modified to clarify that any NPDES permits adopted before the effective date of the proposed Policy are not superseded by its terms.

The City of Santa Rosa appreciates the opportunity to provide these comments on the draft Compliance Schedule Policy. We will be represented at the public workshop on March 18 to answer any questions that Board Members may have.

Yours truly,



GREG SCOLES
Deputy City Manager

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