

STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION--DIVISION OF WATER QUALITY
NOVEMBER 18, 2004

ITEM 10

SUBJECT

CONSIDERATION OF A RESOLUTION PARTIALLY APPROVING AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE NORTH COAST REGION TO AUTHORIZE COMPLIANCE SCHEDULES IN NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS

DISCUSSION

The North Coast Regional Water Quality Control Board (Regional Board) adopted a revised Water Quality Control Plan for the North Coast Region (Basin Plan) under Resolution No. 93-89 on December 9, 1993. The revised Basin Plan was approved by the State Water Resources Control Board (SWRCB) on March 21, 1994, by the Office of Administrative Law (OAL) on August 18, 1994, and by the U.S. Environmental Protection Agency (USEPA) on May 29, 2000.

The Basin Plan sets standards to protect all waters in the North Coast Region and prescribes programs to implement these standards. The standards consist of the designated beneficial uses of the waters, narrative and numeric objectives to protect these uses, and the State's Antidegradation Policy. The standards are used as the basis for establishing effluent limitations and other provisions in NPDES permits to assure water quality standards are met in receiving waters. NPDES permits are issued to dischargers of point source waste to surface waters pursuant to the federal Clean Water Act (CWA).

In some cases, immediate compliance with effluent limitations in NPDES permits may not always be feasible. For instance, in some cases, additional management measures must be implemented or physical controls (such as treatment facilities) need to be constructed or upgraded in order to meet new, revised, or newly interpreted water quality standards. In such situations, it may be reasonable to include in the permit a time schedule for achieving compliance with permit limitations, rather than issue an enforcement order. On March 24, 2004, the Regional Board adopted Resolution No. R1-2004-0011 ([Attachment 1](#)) amending Chapters 3 (Water Quality Objectives) and 4 (Strategic Planning and Implementation) of the [Basin Plan](#) to allow compliance schedules in NPDES permits.

Resolution No. R1-2004-0011 provides that where an existing discharger proves to the Regional Board's satisfaction that it is infeasible to immediately comply with effluent or receiving water limitations, the Regional Board may issue a schedule of compliance under the following circumstances:

1. Where the NPDES limitations are implementing water quality objectives, criteria, or prohibitions that are adopted, revised, or newly interpreted after the effective date of this amendment. Compliance schedules shall not exceed ten years after adoption, revision, or reinterpretation of the objectives, criteria, or prohibitions;
2. Where a discharger currently operating under a non-NPDES, i.e., a Waste Discharge Requirement (WDR), under new interpretation of the law is required to comply with NPDES permitting limitations that implements water quality objectives, criteria, or prohibitions that are adopted, revised, or newly interpreted after July 1, 1977 and that are not included in the WDR. Compliance schedules shall not exceed ten years after the effective date of the initial NPDES permit; and
3. Where a discharger is required to comply with a Total Maximum Daily Load (TMDL) adopted as a single permitting action that implements water quality objectives, criteria, or prohibitions that are adopted, revised, or newly interpreted after the effective date of this amendment. Compliance may extend beyond ten years from the date of permit issuance.

Schedules of compliance shall contain interim limits and shall in all cases be as short as feasible.

Regional Board Resolution No. R1-2004-0011 authorizes the [Regional Board Executive Officer](#) to make minor, non-substantive corrections to the language of the amendment if SWRCB staff finds that they are needed for clarity or consistency. SWRCB staff found that such changes were necessary. These [changes](#) were submitted by the Regional Board Executive Officer.

In addition, SWRCB staff recommends disapproval of the language *"either the TMDL Implementation Plan sets forth a schedule of compliance, or"* from the third provision in the proposed language for Chapter 4 of the Basin Plan: *"The Regional Water Board may establish a Schedule of Compliance in an NPDES permit for a point source discharge under the following circumstances...3) Where a discharger is required to comply with TMDLs adopted as a single permitting action, 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."*

SWRCB staff recommends that this language be disapproved because it can be construed to allow compliance schedules for TMDLs that are implementing water quality objectives that are *not* new, revised, or newly interpreted, which would be inconsistent with federal CWA requirements. This was not the intention of the Regional Board, as documented in their Staff Report.

POLICY ISSUE

Should SWRCB partially approve the amendment to the Basin Plan in accordance with the staff recommendations below?

FISCAL IMPACT

Regional Board and SWRCB staff work associated with or resulting from this action can be accomplished within budgeted resources.

RWQCB IMPACT

Yes, North Coast Regional Board.

STAFF RECOMMENDATION

That SWRCB:

1. Approves the amendment to the Basin Plan to allow compliance schedules in NPDES permits as adopted under Regional Board Resolution No. R1-2004-0011, as corrected by the Regional Board Executive Officer and with disapproval of the following proposed language: *"either the TMDL Implementation Plan sets forth a schedule of compliance, or"* in the third provision for Chapter 4.
2. Authorizes the Executive Director or designee to submit the amendment adopted under Regional Board Resolution No. R1-2004-0011, as approved by SWRCB, to OAL, and to USEPA for approval.

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2004-

PARTIALLY APPROVING AN AMENDMENT TO THE
WATER QUALITY CONTROL PLAN FOR THE NORTH COAST REGION
TO AUTHORIZE COMPLIANCE SCHEDULES IN
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS

WHEREAS:

1. In 1975, the North Coast Regional Water Quality Control Board (Regional Board) adopted two Water Quality Control Plans (Basin Plans) for the Klamath River Basin (1A) and the North Coastal Basin (1B), respectively. The Regional Board adopted a revised Basin Plan for the North Coast Region on April 28, 1988, which combined these two Basin Plans into a single document. The Regional Board adopted the revised Basin Plan for the North Coast Region under Resolution No. 93-89 on December 9, 1993. The revised Basin Plan was approved by the State Water Resources Control Board (SWRCB) on March 21, 1994, by the Office of Administrative Law (OAL) on August 18, 1994, and by the U.S. Environmental Protection Agency (USEPA) on May 29, 2000.
2. On March 24, 2004, the Regional Board adopted Resolution No. R1-2004-0011 (Attachment 1) amending the Basin Plan to allow compliance schedules in NPDES permits.
3. Regional Board Resolution No. R1-2004-0011 delegated to the Regional Board Executive Officer authority to make minor, non-substantive corrections to the adopted amendment, if SWRCB staff find that they are needed for clarity or consistency. These changes were submitted by the Regional Board Executive Officer.
4. Regional Board staff prepared documents and followed procedures satisfying environmental documentation requirements in accordance with the California Environmental Quality Act, scientific peer review, and other State laws and regulations.
5. A Basin Plan amendment does not become effective until approved by SWRCB, until the regulatory provisions are approved by OAL, and until the standards actions are approved by USEPA.

THEREFORE BE IT RESOLVED THAT:

SWRCB:

1. Approves the amendment to the Basin Plan to allow compliance schedules in NPDES permits as adopted under Regional Board Resolution No. R1-2004-0011, as corrected by the Regional Board Executive Officer and with disapproval of the following proposed language:

"either the TMDL Implementation Plan sets forth a schedule of compliance, or" in the third provision for Chapter 4.

2. Authorizes the Executive Director or designee to submit the amendment adopted under Regional Board Resolution No. R1-2004-0011, as approved by SWRCB, to OAL, and to USEPA for approval.

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 November 18, 2004.

Debbie Irvin
Clerk to the Board