

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION NO. R5-2009-0114
DIRECTING EXECUTIVE OFFICER TO ISSUE
TIME SCHEDULE ORDERS IN APPROPRIATE CASES

WHEREAS, the Central Valley Regional Water Quality Control Board (hereafter Central Valley Water Board), finds that:

1. The California Water Code requires the regional water boards to issue mandatory minimum penalties for serious or chronic violations of numeric effluent limitations in National Pollutant Discharge Elimination System (NPDES) permits. (Wat. Code §§13385, subd. (h) and (i), 13385.1.) However, the Water Code provides an exception to the mandatory minimum penalty requirement if the discharge is in compliance with either a cease and desist order or time schedule order that specifies the actions that the discharger must take to correct the violations; the discharger is not able to consistently comply with new, more stringent, or modified requirements and new or modified control measures are necessary to comply; and the time schedule for attaining compliance with the effluent limitation is as short as possible, but no longer than five years. Time schedules longer than one year must include interim requirements. (Wat. Code § 13385, subd. (j)(3).) Time schedules may be issued under Water Code sections 13300 or 13308.
2. A regional water board may delegate issuance of time schedule orders to the Executive Officer, but may not delegate issuance or modification of cease and desist orders. (Wat. Code § 13223.) In Resolution R5-2009-0027, the Central Valley Water Board delegated to the Executive Officer all delegable actions. The issuance and modification of time schedule orders is delegable and is therefore within Resolution R5-2009-0027. Time schedule orders shield dischargers from mandatory minimum penalties. The purpose of this Resolution is to provide explicit authority to the Executive Officer to issue or modify time schedule orders, and to make this authority known to the public and regulated community.
3. Water Code section 13167.5 requires a 30 day public notice and comment period for time schedule orders issued pursuant to section 13300, whether issued by the Executive Officer or the regional water board itself.
4. The State Water Resources Control Board (State Water Board) has adopted the *Policy for Implementation of Toxics Standards for Surface Waters, Enclosed Bays, and Estuaries of California* (SIP) and the *Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits* (Resolution 2008-0025). These policies allowed compliance schedules for priority pollutant criteria established in the California Toxics Rule (CTR), as long as the compliance schedules did not exceed five years or extend beyond May 18, 2010. A "compliance schedule" is a time schedule within a NPDES permit that includes milestones to achieve compliance with a new or more stringent water quality objective. Unlike a cease and desist order or time schedule order, a compliance schedule defers the effective date of new effluent limitations.

5. A number of permittees within the Central Valley Region have compliance schedules that will end in 2010. Some of these dischargers will not achieve compliance by that date and have indicated that they will seek time schedule orders or cease and desist orders under Water Code section 13385, subdivision (j)(3), when final effluent limitations become applicable to them. Issuing orders that have the effect of shielding a discharger from mandatory minimum penalties is not automatic, but is within a regional water board's discretion. Such orders are not appropriate in all cases, such as where delay in meeting final effluent limitations was within a discharger's control. However, in other cases changed circumstances regarding the technological, operational, and economic factors that affect the design, development, and implementation of required upgrades may cause unavoidable delays in meeting new, more stringent effluent limitations. In some cases, in order to promote efficiency, it will be appropriate for the Executive Officer to issue or modify time schedule orders, rather than hold a hearing before the Central Valley Water Board.

THEREFORE, BE IT RESOLVED that:

1. The Executive Officer may issue or modify time schedule orders that meet the requirements of Water Code section 13385, subdivision (j)(3).
2. The Executive Officer shall describe any such orders in the next written Executive Officer's Report.
3. In any case where the Executive Officer determines that review by the Central Valley Water Board itself is appropriate or that a cease and desist order is more appropriate than a time schedule order, she shall place the item on a regular meeting agenda for Board consideration.
4. Nothing in this Resolution limits the authority the Central Valley Water Board delegated to the Executive Officer in Resolution R5-2009-0027.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Central Valley Region, on 10 December 2009.


PAMELA C. CREEDON, Executive Officer