



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

FEB 10 2004

Celeste Cantú, Executive Director
California State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Dear Ms. Cantú:

The U.S. Environmental Protection Agency ("EPA") has reviewed an amendment to the *Water Quality Control Plan, Los Angeles Region* ("Basin Plan") for the coastal watersheds of Los Angeles and Ventura Counties which incorporates language authorizing the inclusion of compliance schedules in National Pollutant Discharge Elimination System ("NPDES") permits. The amendment revises the regulatory provisions of the Basin Plan by adding language to Chapter 3, *Water Quality Objectives*, and Chapter 4, *Strategic Planning and Implementation*. This amendment was adopted by the Los Angeles Regional Water Quality Control Board ("Regional Board") on January 30, 2003 (Regional Board Resolution No. 2003-001), as corrected by the Regional Board Executive Officer in a memorandum dated March 28, 2003. The corrected amendment was approved by the State Water Resources Control Board and State Office of Administrative Law on June 18, 2003 and August 18, 2003, respectively. Section 303(c) of the Clean Water Act ("CWA") requires EPA to approve or disapprove new or revised state-adopted water quality standards. By this letter, EPA is approving the corrected 2003 amendment to Chapter 3, *Water Quality Objectives*, and Chapter 4, *Strategic Planning and Implementation*, of the Basin Plan, as detailed below.

Scope of EPA's Approval

Today's action applies in whole to the corrected 2003 Basin Plan amendment which is subject to EPA's water quality standards approval authority under CWA section 303(c). Section 303(c) requires EPA to review and approve or disapprove new or revised water quality standards submitted by a state. For purposes of section 303(c), water quality standards generally include designated uses and water quality criteria (or "beneficial uses" and "water quality objectives," respectively, under California law), and antidegradation policies. In addition, under EPA's water quality standards regulation, a state has discretion to include in its standards "policies generally affecting their application and implementation, such as mixing zones, low flows and variances." 40 C.F.R. § 131.13. Though adoption of such policies is optional for a state, such implementation policies are also subject to EPA review and approval under CWA section 303(c). Id. The following paragraphs set forth in whole the scope of EPA's approval of the compliance schedule implementation policy that is the corrected 2003 amendment.

ESA Consultation with the Services on EPA's Action

Section 7(a)(2) of the Endangered Species Act ("ESA") states each federal agency shall ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. EPA has determined that today's action will have no effect on any federally listed endangered or threatened species or critical habitat.

Discussion and EPA's Approval

EPA had determined that authorizing provisions for compliance schedules such as those described on pages 2 - 4 of the corrected 2003 amendment fall within the categories of implementation policies and procedures listed under 40 C.F.R. § 131.13. In re Star-Kist Caribe, Inc., 3 E.A.D. 172, 182-183, n16 (Adm'r 1990), modification denied, 4 E.A.D. 33 (EAB 1992); In re City of Ames, 6 E.A.D. 374 (EAB 1996). As such, they are subject to EPA review and approval under CWA section 303(c) and its implementing regulations.

The corrected 2003 amendment specifies that where the Regional Board determines it is infeasible for an existing discharger to achieve immediate compliance with an effluent limit specified to implement a new, revised or newly interpreted water quality standard, the Regional Board may establish a compliance schedule in the discharger's NPDES permit. In addition, the Regional Board may establish a compliance schedule to implement a total maximum daily load ("TMDL") adopted as a single permitting action (i.e., through one NPDES permit). "Infeasible" in this context means "discharger compliance cannot be accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors." Amendment at page 3, footnote 1. This provision authorizes compliance schedules for water quality standards that are new, revised or newly interpreted after the effective date of the corrected 2003 amendment. The amendment specifies that an authorized compliance schedule shall include a time schedule for completing specific actions (including interim effluent limits), final effluent limits, and a final compliance date, based on the shortest possible time required to achieve compliance.

Except in the case of a TMDL adopted as a single permitting action, the provisions require that compliance shall be achieved no later than five years from the date of permit issuance, reissuance or modification, and no later than ten years after the adoption or interpretation of an applicable water quality standard, whichever is the shorter period of time. In the case of a TMDL adopted as a single permitting action, a compliance schedule of greater than five years from the date of permit issuance, reissuance or modification may be granted, but the compliance schedule must be as short as possible as determined in the TMDL support document, and may only be used when implementing a new, revised or newly interpreted water quality standard. This comports with EPA's experience, that five years are generally the maximum amount of time existing dischargers would need to complete the necessary planning, funding and facility upgrades to achieve compliance with new WQBELs. See *e.g.*, 65 Fed Reg. at 31703-31705 (California Toxics Rule); 60 Fed. Reg. 15366, 15397 (Great Lake Initiative).

To document the need for and justify the duration of any such compliance schedule, a discharger must submit the following information, at minimum: (1) the results of a diligent effort to quantify pollutant levels in the discharge and the sources of the pollutant(s) in the waste stream; (2) documentation of source control efforts currently underway or completed, including compliance with any pollution prevention programs that have been established; (3) a proposed schedule for additional source control measures or waste treatment; (4) the highest discharge quality that can reasonably be achieved until final compliance is attained; and (5) a demonstration that the proposed schedule is as short as possible, taking into account economic, technical and other relevant factors. The need for additional information and analyses will be determined by the Regional Board on a case-by-case basis.

In summary, the corrected 2003 amendment allows compliance schedules in NPDES permits issued to existing discharges for WQBELs based on new, revised or newly interpreted water quality standards. In addition, the amendment provides that the Regional Board may establish a permit compliance schedule to implement a TMDL adopted as a single permitting action (i.e., through one NPDES permit). The granting of such schedules are discretionary with the Regional Board, but the exercise of discretion is subject to a number of key limitations, previously summarized. Where the final compliance date is within the permit term, the permit must include the final WQBEL. Where the final compliance date extends beyond the permit term, the permit must contain an interim numeric limit for the pollutant based on the highest discharge quality that can be reasonably achieved until final compliance is attained or existing permit limits, whichever is more stringent. Where the compliance schedule granted under this provision goes beyond the permit term, the Regional Board's permit findings shall include the final WQBEL based on the new, revised or newly interpreted water quality standard. Because we interpret the corrected 2003 amendment to be consistent with CWA requirements, we hereby approve it.¹

If there are any questions regarding our action, please contact Robyn Stuber, of my staff, at (415) 972-3524. As always, we look forward to continued cooperation with the State in achieving our mutual environmental goals.

Sincerely,



Alexis Strauss, Director
Water Division

10 February 2004

¹ We note that, when granting compliance schedules in the context of a particular NPDES permit, the federal regulations at 40 C.F.R. § 122.47 (which have been incorporated by reference as part of California's NPDES program requirements) continue to apply as well. The purpose of compliance schedules under 40 C.F.R. § 122.47 is not to allow avoidance of compliance with final effluent limits, but to allow the discharger time to take necessary remedial measures (including an enforceable sequence of interim requirements) to comply – as soon as practicable – with final effluent limits.

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