

State Water Resources Control Board Cost of Compliance Project
WDR Task Force Comments & Recommendations

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Introduction

There are more than 2,000 Wastewater Discharge Requirements (WDR) permits within the state of California. A stakeholder group of 87 participants was initially charged with providing recommendations to reduce the cost of compliance for the WDR permit. This group has grown, and continues to do so.

Approximately 2-10% of the total cost of this permit is in the permit fee itself, but tens of thousands of dollars go into the cost of compliance for even the smallest permit holders on an annual basis. Often times, this cost skyrockets into the hundreds of thousands of dollars, depending on the regulatory requirements of wastewater discharge program for the permit holder.

The WDR Task Force convened in February and March, via teleconference and in-person, with SWRCB (State Water Board) senior staff, to discuss alignment and cost compliance issues for discharging wastewater to land. In addition, the WDR Task Force conducted a survey in May for members to add detailed specifics.

Participants offered strong suggestions, which are incorporated in this final report to the Board. There were consistent themes throughout the feedback:

- If we simplify the process enough, staff can take a targeted approach focusing on bad actors, while encouraging technology and improving the environment;
- Regulations should be outcome-oriented vs. process-based;
- Compliance for this permit is immensely complex across a diverse stakeholder group;
- There was no call for relaxation of environmental standards – in fact, many commented that this existing compliance structure not only does not improve the environment, but diverts resources that could be utilized in these efforts.

The report was circulated twice in draft form. Upon final circulation, the State Water Board may wish to consider sharing this report to other groups for additional feedback, such as CA Roundtable for Agriculture and the Environment.

The WDR Task Force accumulated significant insights, and continues to harvest facts from reluctant permit holders who often either view this effort as futile, or fear retribution.

As we continue information-gathering, the WDR Task Force will remain engaged with implementation.

Two events within the past week merit mention:

1. *The Ag Innovations Network (AIN) on June 12 hosted, with senior State officials, the “Summit on Regulations Affecting Agriculture” at UC Davis.* Leading producer organizations, individual farmers and environmental organizations participated as well as Board Member Spivy-Weber and co-chair Gore. The day produced several recommendations immediately useful to reducing the cost of compliance, noted in Section 4 of this report. Guidance offered by two farmers and an environmentalist is in Section 2.
2. *The Governor’s Office of Business & Economic Development (GOBiz) announced at the summit it is preparing to brief CalEPA leadership on a “consolidated permit process,”* which probably will impact our cost of compliance implementation. We recommend adaptive management of this process to accommodate the GOBiz process as it emerges.

We wish to express our appreciation to the California Council on Environmental and Economic Balance (CCEEB) for its complementary report on broad reforms. We urge the CCEEB report to be considered as part of the overall cost of compliance implementation.

The WDR report is set forth in the following sections:

1. Survey Purpose & Findings
2. Anecdotal Data from Stakeholders
3. CDFA Report on Dairy General Order
4. Recommendations on Reducing the Cost of Compliance; each section is split into:
 - a. Short Term Recommendations
 - b. Long Term Recommendations

1. Survey Purpose & Findings

Purpose

Initial outreach efforts by Task Force leaders were well received by stakeholders, but participation in the process was slow. With almost 90 individuals on the stakeholder list, among vastly different industry sectors, there was, and still is, a significant challenge in trying to determine solutions that will easily apply across all sectors.

As noted previously, many in the stakeholder group found the effort to be futile for two reasons:

- Issues are so complex, that there is no real way to implement reform in a timely manner; and
- There is no motivation among water board staff to improve the compliance process, particularly as permit fees continue to increase.

These are the underlying factors as to why initial outreach efforts were lackluster. A survey was generated in an attempt to ignite participation. The survey consisted of 19 questions with multiple parts.

There were only nine respondents to the survey. Coupled with the 15 additional interviews Task Force leaders conducted, we have a sample size of about one-quarter of the participant list, with various sectors represented.

Findings

All but one respondent utilize the WDR on a year-round basis. Industries included food processing, dairy, an unknown public agency, waste generation, utilities and state fish hatcheries.

When respondents were asked to consider the major categories of costs to maintain their WDR permit, they responded in the following fashion:

1. WDR permit fee itself was 2-10% of total cost of implementation or maintenance;
2. Sampling, monitoring and reporting were the next biggest line item;
3. Capitol costs including improving, building or replacing equipment and infrastructure was the bulk of the cost;
4. Costs do increase if the business is in a FEMA-designated flood zone.

Generally speaking, all recommendations to improve the compliance process involved streamlining the existing monitoring and reporting requirements.

2. Anecdotal Data from Stakeholders

The California League of Food Processors, representing 45 members with a total economic impact of about \$13 billion in sales annually, surveyed its members in an

effort to assist with the WDR project. CLFP members are primarily canners, freezers, dryers, and dehydrators of fruits and vegetables, along with several dairy processors, snack food companies, juice bottlers, and a variety of specialty products. CLFP member company respondents who have WDR's (rather than discharge to POTW's) reported a broad range of compliance costs in six categories:

1. Developing ROWD and filing the NOI are driven by an anti-degradation analysis and addressing issues raised by third parties. Costs on the low end range from \$25,000 to \$50,000 and on the high end from \$100,000 to \$300,000.
2. Providing supplemental information ranges from \$5,000 to \$50,000.
3. Reviewing the WDR drafts and regulatory hearing participation ranges from \$1,000 to \$10,000 on the low end to \$30,000 to \$50,000 on the high end.
4. Preparing monitoring for salinity, nutrient management plans and monitoring wells, etc., range from a minimum of \$10,000-\$25,000 up to \$100,000-\$150,000.
5. Special studies on topics such as salinity reduction, cropping, potential conduit reports ranges from \$50,000 to \$500,000.
6. Capital costs for compliance upgrades are the most expensive item, ranging from \$50,000-\$200,000 and from \$300,000-\$500,000.

A farming, dairy and cheese processing operation in the San Joaquin Valley reports total compliance costs of nearly \$200,000 for 2012. About 10 percent was for Water Board fees and consulting fees, in excess of \$55,000. Company labor costs are the highest item at \$76,000.

A regional trade association representing home builders, estimate the water permitting compliance costs add an additional \$4500 - \$25,000 per home. The costs vary due to the region and permit requirements.

A Northern California irrigation district – serving more than 200-square-miles with drinking water, wastewater, recycled water, hydropower and recreation – has two NPDES permits with extensive WDR-related requirements, and provided several insights into its costs of compliance, including:

- It is satisfied with its current Water Board staff relationship, and anticipates a 63 percent cost reduction in compliance with the newly operational NPDES permit.
- However, Water Board fees increased 40 percent for 2011-2012 with no added services.
- Staff required seven special studies, which mandated hiring consulting PEs and geologists, along with costs of \$240,000. Some of the studies were unnecessary and redundant, as the district was already meeting relevant limitations and conditions.

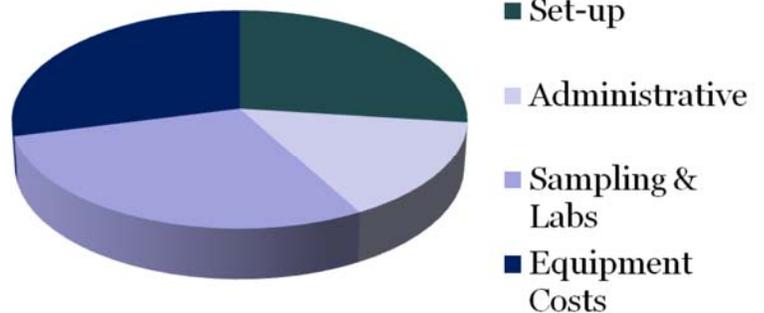
- Electronic data submission is fraught with costly problems. Compiling the large amounts of data of questionable utility is labor-intensive, and requires expensive lab information management systems.
- A significant current issue is the lack of compatibility with commercially available software systems. It appears consultants are necessary to write custom databases and tools – future costs remain uncertain. This could be avoided – and better data gathering and reporting instituted – if staff worked with ratepayers to build a reporting system.

The compliance process for this permit is unique to each entity utilizing the WDR. In an attempt to categorize the types of costs, the WDR stakeholder group created these “buckets” in order to gain a better understanding of where expenditures are being made.

*****Please note: costs vary greatly between permit holders.*****

Cost of Compliance Breakdown
(in approximate percentages):

- 29% Capital & Equipment Costs
- 29% Sampling & Labs
- 27% Set-up
- 15% Other Administrative



AIN Summit Insights

- **A model for Water Board innovative large project management** – Daniel Mountjoy of Sustainable Conservation and former manager for the USDA National Rural Conservation Service, pointed out that his organization is working on the Central Coast with project owners and federal, state and local agencies to carve out mutually acceptable agreements that expedite development. Dr. Mountjoy’s presentation would be well worth our time as we move to implementation.
- **Many property owners fall victim to dueling agencies, and experience no help in reconciliation.** The CEO of a large diversified Northern California grower related his experience in building a pond to improve regional water quality. The Water Board offered one set of requirements, and the county environmental health regulators offered another. “My job became negotiating with two agencies,” he said. To which the CEO of a neighboring organic orchardist and food processor added, “There are huge

quantities of obscure regulations...after a while, you give up trying to figure them all out and just assume you're in violation of something at some point."

3. CDFA Report

In November, 2010, the California Department of Food and Agriculture released a study "Water Quality Regulations for Dairy Operators in California's Central Valley – Overview and Compliance Cost Analysis." This report studied the cost of compliance for the general WDR order for dairies (General Order) by interviewing dairy operators and their consultants. While the report states that costs were expected to increase after 2011 and beyond, at the time, it was estimated that it costs approximately \$15,000 per 1000 cows. This is one of the few third-party analyses on the WDR program, yet it is only specific to the dairy general order. The full study can be located on CDFA's website, by typing in the title in the search box.

4. Recommendations on Reducing the Cost of Compliance

Short-Term Recommendations for Processes

- Re-evaluate the goals of the permit and its compliance process. Redraft reporting requirements to achieve mutually beneficial goals.
 - The goal stated on the SWRCB website is, to paraphrase, to regulate discharges. Shouldn't the goal be to minimize impacts to the environment?
 - Is there room to consider a process in which permit holders can create water quality plans, with mutually agreed upon goals, but are granted flexibility to achieve those plans?
 - The current system requires permit holders in the central valley to report each application of nutrients in the annual report. For growers with irrigation systems that "spoon feed" nutrients to the crop, this could equal thousands of data points that are meaningless in a report that is rarely reviewed, much less evaluated for environmental merit.
 - Additionally, much of this information is proprietary. Farming is a competitive environment. Farmers and consultants spend resources on nutrient application systems to maximize a crop's production, and this becomes publicly available under the WDR annual report.

- If there is a technology known to decrease impacts to the environment, and a business is using this technology, the monitoring and reporting requirements should be drastically reduced. Innovation should be encouraged, stakeholders felt strongly, but staff fails to do so by requiring expensive special studies and not being informed on evolving technology.

- Evaluate regional board vs. state board needs and requirements and implement into goal-setting. The Management Coordinating Council can be utilized to facilitate this process.

- Eliminate redundancies in reporting, monitoring and studies. A simplified report of requiring the largest reporting requirements in order to achieve the goals of the permit should be required at least annually, but flexible enough for each permit holder to achieve. Back-up documentation should be held at permit holder's location, for review upon request.
- Reduce reporting and sampling frequency – the same data is reported monthly, quarterly and annually. Soil types could indicate whether or not this type of reporting is needed.
 - Until greater changes are made to the compliance process, consider allowing permit holders to collect and submit data monthly, quarterly or annually. This should be relatively easy to execute for entities already operating under the WDR permit guidelines. *The option to provide a way in which to collect and submit data is vital to improving the compliance process.* Each permit holder has a unique compliance process, so what might work for one, may not work for another.
- Soil samples should be considered on averaging. At times, soil samples could be invalidated due to anomalies, such as skins from nuts, etc.
- Use programmatic EIRs extensively to accelerate projects and lower frictional costs.
- Grant permits or waivers based on risk levels. At this time, it is clear that staff has an internal prioritization process as to when certain permits will be approved. They are approved within fifteen months to five years. There are some cases in which approvals have taken over ten years. For lower-risk areas (those permits requiring a longer time frame), they should have special categorization in which to operate, so that staff cannot appear after significant time has elapsed and offer fines for violations of a permit that was never granted.
 - The WDR Task Force heard numerous anecdotal examples of WDR permits that have not yet been granted. While permit applicants are allowed to perform activities under the permit, they hesitate to install expensive equipment or the latest technology because there is a chance water board staff can come in and inform them their activities are incorrect. An expedited permit or waivers should be granted for low risk areas, or areas in which there is no way to mitigate for degraded ground water. If there is a NOI + standard monitoring, shouldn't a waiver from the permit be granted?
- Enforcement actions are usually launched immediately upon the notice of a violation. This violation may be easily seen by facility historical data to be an outlier or anomaly. Staff should investigate the violation to determine if the result was an outlier, and might be watched but not subject to a fine.

- Management approval of staff data requests in excess of statutory provisions, which add time and expense for the permit holder. These extraordinary data requests frequently require a licensed professional (such as a civil engineer) to answer even the most minimal questions, such as updating a loading calculation.
- Are specialized site characterizations necessary? Why is the latitude and longitudinal information for the site required for the ROWD? Isn't parcel information enough?
- AIN consensus strongly urges agency leaders, such as the Water Board, to "encourage a team approach through interagency working groups" with an immediate task of identifying and addressing barriers to inter-agency coordination. These teams of relevant agencies should also immediately develop and increase the visibility of standards, guidelines and manuals, and jointly host continuous education programs for users.

Long-Term Recommendations for Processes

- Analyze software and systems used to report data. There currently is little-to-no assurance of future direction of program or requirements and little technical assistance available. Can off-the-shelf systems be deployed instead of the cost-prohibitive custom software?
- Consider implementing software programs such as ISO-14001 Environmental Management Systems. This internationally-recognized environmental management system is results-oriented, with a focus on continuous improvement. Theoretically, parties would come together to agree on common goals, and then permit holders could manage their goals (and how to achieve them) through this program. Water board staff could act as third-party auditors by performing spot checks on a periodic basis.

<http://www.iso.org/iso/home/standards/management-standards/iso14000.htm>

- Consider representative monitoring and reporting for certain industries, water sheds or soil types. Geologists can determine what is likely to transpire in the soil and groundwater, depending on discharge activities.
 - It is highly unlikely that certain discharges will immediately impact soil and ground water. The process takes time, so reporting should consider timeliness of impacts and as our knowledge on water and soil grows, requirements should change.
- Establish a simpler, more direct way of managing Basin Plans other than full-scale amendments. The recent emphasis on non-degradation policy adds a potential dead-end, as numerous dischargers usually overlay contaminated

groundwater that must be protected in the Basin Plan, but cannot be beneficially used.

Short Term Recommendations for Management

- Fees continue to increase, even with a reduced number of businesses operating within the permit and a decrease in water board staff. Staff levels and budgets must be reconciled so that there is consistent, and decreasing, costs to fee-payers.
 - For example: Almost 400 dairies have gone out of business since 2007. CDFA reports in “California Dairy Statistics, 2012 Data” that 105 dairies closed in 2012. Reduced price for certain classes of milk, coupled with high regulatory costs, are putting producers out of business at an alarming rate. However, SWRCB fees continue to increase and there is an existing proposal to increase fees to dairies by 43.6%.
 - Industries facing an economic depression should be relieved of fee increases immediately.

- New technology usually triggers an immediate demand for special studies, new permits, increased costs and a slow response. Technology is usually meant to improve the environment and responsiveness of customers. New technology should be encouraged and enabled, through financial incentives and staff field days.

Long Term Recommendations for Management

- AIN offers four inter-related management systems:
 1. Establish a lead agency to direct the regulatory process for major projects meeting established benchmarks. Assign a project manager from the lead agency with the authority and knowledge to efficiently shepherd the applicant to approval and completion.
 2. Establish a web portal that enables applicants to submit and update all necessary information and electronic signatures; include electronic tracking, automatic email notifications to applicants and State staff; include smart phone apps.
 3. Integrated with #2, establish a system in which a project that fits a determined set of criteria will follow an expedited path to approvals.
 4. Integrated with #2 and #3, provide layered regulatory roadmaps of the process and matrixed requirements and agency goals to encourage compliance, innovation and efficiencies.

- The highest cost in the compliance process is often times cost of infrastructure or equipment. Working with environmental groups can create and establish grant programs to incentivize utilization of the best technology in achieving mutual goals.

- There are conflicts between SWRCB and DWR programs; in particular, conservation. DWR mandates and incents conservation, which, in some cases, concentrates waste to land. This needs to be resolved by interagency cooperation and not delayed until customers are caught between differing agencies.
- There are variances among the regional boards, and between the regional and state boards, in the costs of compliance and staff interpretations. These must be reconciled, transparent and reduced to the minimum. While it is recognized there are regional differences based on geography and other circumstances, interpretive conflicts should be reduced.
 - For example, the Irrigated Lands Regulatory Program in the Central Valley has taken on significantly different WDR than the requirements adopted along the central coast. Geography, hydrology and other factors will demand different requirements – yet there are drastic inconsistencies in staff interpretations. WDR experts and consultants have looked into providing services to other regional board areas, yet the WDR are so different their staff, that the required training and technology cannot easily accommodate these differences. The programs should be consistent enough that should a company need to hire a consultant to do the work, the consultant should be able to do the work on a company-wide basis, no matter location of facilities.
- The program prioritization process should be done publicly with full transparency.