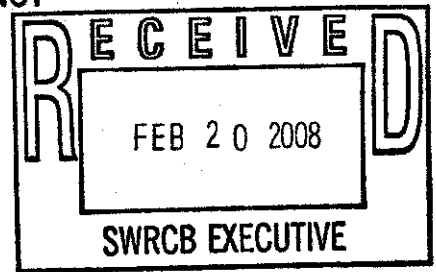




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Public Comment
Compliance Sched. - NPDES
Deadline: 2/20/08 by 12 p.m.



FEB 20 2008

Jeanine Townsend, Acting Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Subject: NPDES Compliance Schedule Policy

Dear Ms. Townsend:

EPA commends the State Board for its thoughtful and comprehensive draft Statewide authorizing provision for use of schedules of compliance in National Pollutant Discharge Elimination Systems (NPDES) permits. We agree a consistent approach to allowance of compliance schedules in NPDES permits is desirable, to promote certainty and to conserve State and federal resources.

We enclose a few comments, primarily regarding the staff report. Please note the positions expressed in this letter and in the attachment are preliminary in nature and do not constitute an approval or determination by EPA under Clean Water Act Section 303(c). We would make any approval/disapproval decision following State adoption of the policy and submittal to EPA.

Sincerely yours,

Alexis Strauss 20 February 2008
Alexis Strauss, Director
Water Division

Enclosure

US EPA Comments dated 20 February 2008

California State Water Resources Control Board -- NPDES Compliance Schedule Policy

1. Compliance schedules are only available for use if authorized in State water-quality standards and/or implementing regulations, as discussed in *In the Matter of Star-Kist Caribe, Inc.*, 3 E.A.D. 172, 177, 184 (Adm'r 1990), modification denied, 4 E.A.D. 33 (EAB 1992); *In re City of Ames*, 6 E.A.D. 374 (EAB 1996). We therefore recommend the State Board clarify how the new compliance schedule policy complies with this aspect of the *Star-Kist* decision.
2. The first "Whereas" clause in the policy says the State Board is designated as the state water pollution control agency for all purposes under the federal CWA. However, some agencies, e.g. Board of Forestry, are also designated management agencies for certain CWA purposes. This ambiguity could be clarified.
3. Paragraph 2(c) of the policy states compliance schedules are not authorized under the policy for permit limitations implementing criteria promulgated in the CTR, as those are covered by the SIP. This suggests, but does not specify, that if a discharger receives a WQBEL based on a wasteload allocation in a TMDL implementing a CTR criterion, and that WQBEL is more stringent than a previous CTR-based WQBEL, a compliance schedule would not be available. We recommend this be clarified.
4. Page 2 of the Discussion for the State Board Resolution, next to last paragraph, states that the policy applies to permits implementing "new, revised, or newly interpreted water quality standards that are more stringent than water quality standards previously in effect." The policy itself, page A-4, par. 2.e, states that compliance schedules are not authorized for permit limitations implementing new, revised, or newly interpreted water quality standards that are less stringent than water quality standards previously in effect. This may be a subtle distinction, but we would recommend that the language be the same. Additionally, in some situations it could be difficult to determine whether a new standard is more stringent, e.g., a change from dissolved to total metals or vice-versa, a change from fecal coliform to e coli or enterococcus, a change from a water-column standard to a fish-tissue standard. It is not clear whether, if a discharger had to change its facility or operations to comply with a new standard of this type, a compliance schedule would be appropriate under the new policy. We recommend that this be clarified.
5. On page 8, second paragraph under "Compliance Schedules to Implement TMDL," the staff report cites Section 303(d) of the CWA indicating that states must develop TMDLs, and in the second sentence states, "A numeric target for the problem pollutant must be specified for the impaired water body, which when met should ensure attainment of water quality standards." We assume that the term "numeric target" in that sentence and elsewhere in the paragraph refers to the total maximum daily load specifically (the total allowable load). Use of the term "numeric target" is ambiguous here because in practice, calculation of different numeric targets may be performed as a part of the TMDL development process. In some cases, a TMDL has several numeric targets, and the target may not be the same as the eventual total maximum daily load (allowable load).

Therefore, we recommend that the staff report replace "numeric target" with "total allowable load," which is the term used elsewhere in this paragraph.

6. The third full paragraph on page 10 of the staff report discusses portions of the California SIP that EPA disapproved in 2006. We recommend that this paragraph state more clearly that, as a result of EPA's disapproval, this provision is not in effect. We recommend that in the first line, the word "specifies" be changed to "specified."

7. Similarly, Table 1 of the staff report on page 12 under "Applicability" states when the 15-year SIP provision "applies." However, as the result of the EPA disapproval, that provision does not apply anywhere. We recommend this be clarified in Table 1.

8. For the same reason, we recommend clarifying on page 13 of the staff report that the North Coast provision regarding new permittees was disapproved by EPA and does not apply.

9. Page 51 of the staff report states that "compliance schedules to achieve water-quality based NPDES permit limitations based on TMDLs must be as short as possible (as determined in the TMDL support document)...." EPA agrees that all compliance schedules must be as short as possible, as required by EPA regulations at 40 CFR 122.47. However, as discussed in EPA's recent *California Permit Quality Review Report on Compliance Schedules* (October 31, 2007), the "as soon as possible" determination should be made at the permit stage. In some cases, it may be that the "as soon as possible" analysis in the TMDL implementation plan will serve as the basis for the "as soon as possible" determination for a particular permit. However, given the time that can pass between TMDL and permit adoption, along with the possibility that meeting effluent limitations "as soon as possible" may differ among different permittees, the permitting authority should revisit the "as soon as possible" determination when each specific permit is developed.

10. On page 59 under alternative 6.a.2, the staff report states, "Compliance schedules would not be authorized for permit limitations implementing NTR or CTR criteria (SIP provisions would apply)." This language could be interpreted to suggest that the SIP provisions authorize compliance schedules for NTR criteria. However, the SIP compliance schedule-authorizing provision explicitly excludes NTR criteria (see SIP sec. 2.1, footnote 10). We recommend clarifying the reference to the SIP provisions, and clarifying whether compliance schedules would be authorized for NTR criteria.