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VIA ELECTRONIC MAIL

February 20, 2008

Chair Tam Doduc, and Members of the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Comments on Proposed Statewide Compliance Schedule Policy for NPDES Permits

Chair Doduc, and Members of the Board,
The Western States Petroleum Association (WSPA) is a trade association that represents the companies and other entities that conduct most of the petroleum-related operations in the western United States. These operations include production, transportation, refining and marketing of petroleum and petroleum-based products. WSPA member facilities operate under National Pollutant Discharge Elimination System (NPDES) permits for various wastewater and stormwater discharges, including the General Industrial Permit. WSPA members have a key interest in State Board's proposed statewide policy for Compliance Schedules in NPDES permits and its interpretation and application for permit requirements. We appreciate the opportunity to submit the following comments on the proposed policy.

WSPA believes that the requirement in the proposed policy that essentially limits compliance periods to five years is unreasonable. There is the distinct possibility that if adopted as written, the proposed policy will inevitably lead to permit effluent limits in the future with which dischargers cannot feasibly comply. We do not believe that five years is sufficient time to design, permit, finance and construct new or expanded treatment facilities to meet potentially more restrictive effluent limits. The compliance policy should provide for adequate, practical timelines for dischargers to meet discharge limits. We also believe that this requirement is unwarranted -- there is *nothing* in either the Clean Water Act or the Code of Federal Regulations that dictates maximum allowable compliance period. In fact, the staff report for this policy acknowledges as much, by stating that US EPA has recently approved the North Coast Basin Plan amendment that allows a ten-year compliance period.

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WSPA further believes that the requirement in the proposed policy that would only allow compliance schedules where facility construction or other significant program implementation is necessary to achieve compliance with new permit effluent limits would essentially prohibit the use of alternative compliance strategies to achieve water quality standards. This would include for example, development of TMDLs, site specific objectives, performance of water effects ratio analyses and similar approaches that better define water quality standards for a specific water body, or even the development and implementation of pollutant offset or trading programs. The State Board has historically recognized that "alternative compliance strategies" have a place in water quality compliance efforts – TOSCO order of 2001 and City of Vacaville order of 2002. In addition, this proposed policy may be in conflict and inconsistent with other policies such as the policy that implements the California Toxic Rule, the recently adopted policy for implementing sediment quality objectives (SQO Policy), and with other proposed policies, such as the proposed recycled water policy that recognize and use alternative compliance strategies. Attachment A provides more detailed comments as regards compliance schedules and TMDLs and the SQO Policy.

WSPA is concerned with the potential impact of the proposed policy on existing compliance schedules in current NPDES permits. The proposed policy currently states that this policy "supersedes all existing provisions authorizing compliance schedules in Basin Plans" – it is not clear how this may affect existing compliance schedules. WSPA is also concerned with the potential impact of the proposed policy on existing and soon to be revised site specific and general NPDES permits for industrial stormwater discharges. These permits rely heavily on structural BMPs that often require significant time to achieve. Attachment A provides more detailed comments as regards compliance schedules and stormwater permits and re-opener for compliance schedules in existing permits.

Finally, as stated above, WSPA believes that the proposed policy imposes more restrictive time limitations on compliance schedules than under federal law; the incremental consequences of those new restrictions as a matter of state law are impacts which must be but have not been evaluated under CEQA in this proposed policy (see detailed CEQA comments in Attachment A).

WSPA urges that the board revise the proposed policy to allow reasonable compliance periods, to allow for alternative compliance strategies and by extension, that these efforts should be given appropriate time periods within which to be pursued and to incorporate adequate CEQA review of the potential impacts of the proposed policy. Further, WSPA urges the board provide consistency between this proposed compliance schedule policy and existing permits and policies and with future currently proposed policies.

Thank you for considering our comments. Please contact me at 916-498-7755 if you have any questions or wish to discuss this further.

Sincerely,

Kevin Buchan

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Attachment A
Western States Petroleum Association
Comments on Proposed Policy for Compliance Schedules in NPDES Permits:
Detailed Comments on Selected Issues

The following detailed comments of the Western States Petroleum Association (WSPA) are submitted to the State Water Resources Control Board (State Board) on the "Proposed Statewide Policy on Compliance Schedules in National Pollutant Discharge Elimination System Permits – Draft Staff Report" dated December 4, 2007 (Staff Report) and on the proposed "Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits" (Policy) attached as Appendix A to the Staff Report.

Comment 1 – The Policy Should Authorize Pre-TMDL Compliance Schedules

On January 20, 2000, in comments on Total Maximum Daily Load ("TMDL") regulations proposed by the U.S. Environmental Protection Agency ("EPA"), the State Board commented on EPA's requirements for stringent effluent limits, and disallowance of mixing zones, in NPDES permits for discharges to impaired water bodies, prior to the development TMDLs:

> "These positions are not tempered by any consideration of the magnitude of the effect of the discharge or the costs of complying with the limits. While EPA allows for compliance schedules, these can only be invoked if the compliance schedule provisions exist in the operable water quality management plan. It is quite possible that these positions could lead to a situation where a stringent effluent limit is applied only to have a subsequent TMDL identify a less stringent requirement. A problem is created when compliance with the strict limits triggers significant capital improvements (i.e., treatment upgrades, reclamation, recycling systems, etc.) We take issue with the strict imposition of effluent limits without regard for cost or benefit. Significant large costs should not be pursued for negligible and insignificant decreases in pollutant load or concentration. . . . We offer the following language for consideration. . . . *High cost physical plant improvements required to comply with effluent limits may be delayed until such limits are confirmed or revised by establishment of a TMDL. The schedule of compliance shall reflect any such delay; however, in no case should the delay in initiating physical plant improvements extend more than ten years from the date of initial permit renewal."*

Letter from Walter Petit, State Board Executive Director, to Alexis Strauss, EPA, "Comments on Proposed Total Maximum Daily Loads (TMDL) Program Rule," January 20, 2000, p. 13 (emphasis added). For the same reasons, when the State Board adopted its "Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California" ("State Implementation Policy" or "SIP") in March 2000, to implement the federal California Toxics Rule ("CTR"), it included a pre-TMDL compliance schedule provision allowing up to fifteen years to complete a TMDL and another five years to comply with TMDL-derived effluent limits, with performance-based interim limits and commitment to support TMDL development as interim requirements during the course of the compliance schedule. SIP (2000), sections 2.1 B and 2.1.1.

What the State Board wrote in 2000 is no less true today. Yet the proposed Policy limits compliance schedules to five years except in the case of "unforeseen circumstances, beyond the control of the discharger" which may justify one five-year extension. Policy, section 5(b), (c).

Such unforeseen circumstances are defined so narrowly, in terms of natural disasters, failure of new treatment systems or third-party litigation, as to apparently exclude the clearly foreseeable technical and logistical difficulty – or even impossibility – of achieving compliance with unrealistically stringent limits for discharges to impaired receiving waters. More important, the State Board is now reversing its previous position, as provided in its 2000 comments to EPA, that construction of physical improvements required to comply with such limits should not even be initiated until ten years from the date of permit renewal, to allow time to develop TMDLs. Instead, under the proposed Policy, a compliance schedule may be justified by and may extend for only the time needed to "design and construct facilities or implement new or significantly expanded programs" in order to achieve compliance by the end of a presumptively five-year schedule. Policy, sections 2, 5(a); Staff Report pp. 46-50, 66-67.

WSPA recognizes that State Board staff has based this aspect of the proposed Policy on EPA's October 23, 2006 letter disapproving the pre-TMDL compliance schedule provisions of the SIP. EPA's letter states, in part, that developing a TMDL does not constitute a "remedial action" to achieve compliance and therefore does not satisfy the Clean Water Act ("CWA") requirement for "interim milestones" under the definition of compliance schedule in 40 C.F.R. section 122.47. See Staff Report, p. 10. However, EPA's letter also represents a change in that agency's previous position on this issue. Indeed, the idea of pre-TMDL compliance schedules appears to have originated with EPA. See letters from Alexis Strauss, EPA, to Loretta Barsamian, San Francisco Regional Water Quality Control Board ("Regional Board"), July 22, 1999, and to Lawrence Kolb, San Francisco Regional Board, November 12, 1999, proposing pre-TMDL compliance schedules for the NPDES permit renewal for the Tosco Avon refinery. At that time, EPA also insisted that "alternative final limits" applying CTR criteria end-of-pipe for non-bioaccumulative pollutants, or no net loading for bioaccumulative pollutants, were necessary in the event that TMDLs were not timely completed. WSPA, and ultimately the State Board, disagreed with the need for the alternative final limits; see *In the Matter of Review of Waste Discharge Requirements for the Avon Refinery and for the Rodeo Refinery*, State Board Order No. WQ 2001-06, March 7, 2001 ("Tosco Oder"). Nevertheless, EPA itself agreed that dischargers should comply with interim performance-based limits and support TMDL development during the pre-TMDL compliance schedule, with no need for new treatment facilities. See Tosco Order, p. 23 ("EPA Region 9 representatives have indicated that they do not expect the dischargers to institute any structural controls in order to comply with the potential alternative default limitations, in other words that the alternative limits should not be taken seriously.") The State Board concluded "that a compliance schedule that leads to compliance with a water quality standard through TMDL development satisfies applicable legal requirements." Tosco Order, p. 25.

The Tosco Order was upheld in two published Court of Appeal decisions, *Communities for a Better Environment v. State Water Resources Control Board*, 109 Cal.App.4th 1089 (2003) and 132 Cal. App. 4th 1313 (2005). In the first decision, the Court upheld the permit's "rigorous schedule of compliance" (109 Cal. App. 4th at 1106) which required the permittee to comply with interim limits, monitor impairing pollutants and support TMDL development, but did not require installation of new treatment equipment before TMDL completion. In the latter decision, having rejected the plaintiff's other claims, the Court specifically concluded that the statutory definition of compliance schedules was satisfied, because the permit contained an enforceable performance-based interim limit, required monitoring of impairing pollutants, and required ultimate compliance at the end of the schedule. 132 Cal. App. 4th at 1337.

The interpretation of the law by the State Board, the Court and even EPA, at that time, remains correct. It is true that EPA eventually, and belatedly, rejected the pre-TMDL compliance schedule provisions of the SIP in its October 2006 letter, though only after the agency was sued by Baykeeper et al. in August 2006. Since that suit was settled, however, without adjudication of the plaintiffs' claims, the *CBE v. State Board* decisions remain the controlling case law. Moreover, as the Staff Report (pp. 6-8) emphasizes, citing EPA's *Star-Kist Caribe* decision, the authority to allow compliance schedules is established in the first instance by provisions of state law. Thus, even if EPA were persuaded to change its mind yet again, adoption of this Policy by the State Board would preclude, as a matter of state law and independent of any opinion of EPA, the very same pre-TMDL compliance schedules that the State Board advocated in its 2000 TMDL program comments and adopted in the SIP.

WSPA does not believe that the State Board should reverse its own policy and enshrine EPA's error as a matter of state law. For the same reasons that the State Board previously endorsed pre-TMDL compliance schedules, such schedules should be authorized by this Policy as they were in the SIP.

Moreover, even if EPA's changed opinion were correct, which it is not, the Staff Report also emphasizes (p. 7; see also p. 46) that "the CWA and federal regulations do not limit the duration of an otherwise permissible compliance schedule to the five-year term." The five year limit, with its narrow "unforeseen circumstances" exception which apparently would not be available in most cases where the difficulties of compliance are clearly foreseeable, will be purely a feature of state law under this Policy. At the least, the Policy should authorize longer pre-TMDL compliance schedules, as originally provided in SIP section 2.1(b). Even if accompanied by the wasteful investment in unnecessary control technology that EPA now urges, only to be mooted by less stringent limits based on wasteload allocations after TMDLs are completed, the inclusion of State Board authority for longer compliance schedules in the Policy would at least allow some time for TMDL development before that investment must commence.

Comment 2 – The Policy Should Allow Longer Compliance Schedules for Implementation of Stormwater Limits

The Staff Report (p. 56) indicates that "the proposed policy does apply to industrial storm water permits (which include construction permits pursuant to 40 C.F.R. 122.26), but not to MS4 permits." As the State Board is aware, some Regional Boards have adopted a controversial practice of establishing numeric limits for storm water in NPDES permits for certain facilities. See, e.g., *In the Matter of the Petition of Boeing Company*, State Board Order No. WQ 2006-0012, December 18, 2006 ("Boeing Order"), upholding numeric storm water limits as applied at that facility. In some cases, numeric limits have been established based on SIP procedures for limit calculation, despite the fact that the SIP (p. 3, footnote 1) expressly "does not apply to regulation of storm water discharges."

These numeric limits are particularly problematic, given the difficulties noted by the State Board's own Blue Ribbon Panel convened to study storm water issues. See the Blue Ribbon Panel report, "The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial, and Construction Activities" dated June 19, 2006, explaining that: "there is wide variation in storm water quality from place to place, facility to facility, and storm to storm. . . . Since the storm-to-storm variation at any outfall can be high, it may be unreasonable to expect all events to be below a numeric value" (p. 6); "the Panel

recognizes the inadequacy of current monitoring data sets. . . for establishing Numeric Limits and Action Levels" (p. 21).

WSPA strongly opposes the establishment of numeric storm water limits which are not required by law and are lacking in scientific justification. Nevertheless, we recognize that the State Board has approved their use in some circumstances at facilities facing "unique" storm water problems, as stated in the Boeing Order. However, given the well-known difficulties of establishing and complying with scientifically valid numeric limits, the Policy should not require compliance with such limits within five years except in narrowly-defined "unforeseen circumstances."

In addition, one point regarding storm water compliance schedules is worth noting. The Policy does not apply to CTR pollutants, which continue to be governed by the compliance schedule authorizing provisions of the SIP. Policy, Section 2(c). However, as stated in SIP footnote 1, the SIP by its terms does not apply to storm water discharges. This leads to a highly counter-intuitive result: the Policy could be interpreted to apply to impose a five-year limit on compliance schedules for numeric storm water limits that were calculated from CTR criteria using SIP procedures. Although CTR pollutants are generally excluded from the Policy, in that case the exclusion would be formally inapplicable, because the SIP does not apply to storm water discharges – despite the informal reliance on SIP procedures "by analogy" to derive the limits (as in the Boeing case).

WSPA therefore recommends that the State Board modify the draft Policy to authorize longer compliance schedules for numeric storm water limits in cases where they are determined to be appropriate, at levels to be established case-by-case based on the circumstances at individual facilities, and notwithstanding that the difficulties of compliance may be "foreseen" at the outset.

Comment 3 – The Policy Should Allow Longer Compliance Schedules for Implementation of New Sediment Quality Objectives

The Policy and Staff Report contain no mention of the Sediment Quality Objectives ("SQOs") adopted yesterday by the State Board in its Water Quality Control Plan for Enclosed Bays and Estuaries of California: Part I Sediment Quality ("SQO Plan"). Nor does the SQO Plan mention the pending Policy, although paragraph 13 of State Board Resolution adopting the SQO Plan provides that: "Time schedules to achieve the objectives will be developed on a case-by-case basis by the appropriate Regional Water Board." Nevertheless, as new water quality standards, it appears that the SQOs presumably would be subject to the Policy.[1]

The SQO Plan represents an unprecedented and highly complex new regulatory regime, raising serious implementation issues as reflected in WSPA's comments submitted in that rulemaking. The uncertainties in implementation of that program dictate a generous allowance of time for dischargers to come into compliance with any new permit limits that may be established to meet SQOs. As the State Board itself indicated in its economic analysis for the SQO Plan, "Economic

[1] In comments to the State Board dated November 30, 2007, WSPA suggested that the SQO Plan should include a separate provision expressly authorizing Regional Boards to grant compliance schedules that allow a reasonable time for permittees to come into compliance with new or revised permit limits implementing SQOs. The State Board's Response to Comments document, issued in draft form on February 14, 2008, did not respond to this comment.

Considerations of Proposed Sediment Quality Plan for Enclosed Bays in California" (September 18, 2007) ("Economic Report"), the analysis supporting the SQO Plan indicates that entire bays and harbors may fail to achieve the SQOs (see, e.g., Economic Report at p. 5-5, which shows the SQO assessment results for San Francisco Bay). The Economic Report goes on to state (p. ES-4) that: "Because strategies to meet current narrative objectives at many impaired sites are still in the planning stages and the overall effects of implementation strategies are unknown, estimates of incremental costs would be highly speculative"; see also p. 7-3: "How the Regional Water Boards will ultimately implement the Plan is also highly uncertain" and "Assessment data gaps also introduce uncertainty to the economic analysis of achieving compliance with the proposed Plan."

WSPA believes that, in the face of such uncertainties, the Policy is too restrictive to be applied effectively to permit limits implementing SQOs. Again, the five-year limit on compliance schedules, with the narrow exception for "unforeseen circumstances" is not required by federal law. More than five years may well be necessary to address these novel regulatory requirements, and the implementation difficulties would be foreseeable from the outset. Accordingly, the State Board should allow case-by-case development of compliance schedules for implementation of SQO-based permit limits, as indicated in Paragraph 13 of its SQO resolution, by expressly exempting SQO-implementing compliance schedules from this Policy.

Comment 4 – Compliance Schedules for Implementing TMDLs Should Be Governed Exclusively by TMDL Implementation Plans

Section 5(d) of the Policy authorizes compliance schedules exceeding ten years for permit limits that implement or are consistent with wasteload allocations ("WLAs") in a TMDL (including limits established in a "single permitting action" incorporating requirements of a TMDL). WSPA strongly endorses this allowance of additional time for TMDL implementation.

However, section 5(d) is ambiguous as to the allowable duration of such compliance schedules. Section 5(d)(i) indicates that the TMDL implementation plan shall include a maximum length for compliance schedules for attaining WLA-based effluent limits, and section 5(d)(ii) states that the compliance schedule cannot exceed that maximum length. However, it appears that Regional Boards would have discretion to depart from the duration of compliance schedules as set forth in the TMDL implementation plan, under the general rule that compliance schedules "must be as short as possible."

We believe that this provision creates an unnecessary uncertainty in the duration of allowable compliance schedules. The TMDL implementation plan is itself a regulatory action in which the Regional Board will establish the amount of time necessary to come into compliance with WLA-based limits. The premise of the plan is that such time is, in fact, necessary in order to do so. The Regional Boards, and parties who may challenge permits, should not revisit the issue under the rubric of keeping compliance schedules "as short as possible," or establishing interim limits or milestone deadlines. This procedure could potentially result in inconsistent compliance time frames, interim limits and milestone deadlines that were already determined to be unrealistic during development of the TMDL plan. Instead, WSPA recommends that Section 5(d) provide that the duration and requirements of TMDL-based compliance schedules, like the WLA-based limits themselves, should be simply consistent with the TMDL and its implementation plan.

Comment 5 – The Policy Should Expressly Preclude NPDES Permit Re-Opening to Modify Existing Compliance Schedules

The Policy applies to all NPDES permits that are modified or reissued after its effective date. Policy, Section 2. Thus, the Policy explicitly does not apply retroactively. Implicitly, then, the Policy does not apply to, and would not authorize, reopening existing NPDES permits for the purpose of modifying their compliance schedules to be consistent with the Policy terms.

However, the State Board should not leave this issue open for argument, especially since regulatory certainty is one of the important functions of the Policy, as emphasized throughout the Staff Report. In particular, as the Staff Report notes (pp. 2-3), pursuant to a lawsuit settlement, EPA recently issued a report reviewing the compliance schedules in randomly-selected existing NPDES permits throughout the state, and recommended that certain practices with respect to compliance schedule be improved. While this Policy may be intended to provide for such improvements going forward, it should not be applied retroactively, which would be contrary to the State Board's intent as expressed in Policy section 2.

In order to forestall future arguments, WSPA therefore requests that the Policy explicitly state that it does not provide the basis for reopening existing permits for the purpose of modifying their compliance schedules to address any alleged inconsistencies with the Policy.

Comment 6 – The Staff Report's CEQA Analysis is Inadequate

The California Environmental Quality Act (CEQA) requires an agency adopting new regulatory standards or requirements to evaluate the reasonably foreseeable environmental impacts of methods of compliance with the new standards or requirements, feasible mitigation measures, and alternative means of compliance which would avoid or eliminate the identified impacts. CEQA Guidelines (14 Cal. Code Regs.) section 15187. It is well settled that, where a program intended for environmental protection may have unintended adverse environmental consequences, those consequences must be analyzed, and feasible alternatives or mitigation incorporated in accordance with CEQA, before the program may be adopted. See, e.g., *County Sanitation District v. County of Kern*, 127 Cal. App. 4th 1544 (2005); *City of Arcadia v. State Water Resources Control Board*, 135 Cal. App. 4th 1392 (2006).

The State Board administers a "certified" regulatory program pursuant to CEQA, meaning that it need only comply with abbreviated CEQA requirements. Pub. Res. Code, § 21080.5; CEQA Guidelines (14 Cal. Code Regs.), Sections 15250-15253. However, Public Resources Code section 21080.5 does not grant qualifying agencies blanket exemptions from all of CEQA's provisions. On the contrary, in implementing their programs, regulatory agencies must adhere to the basic policies and substantive obligations established by CEQA. *Sierra Club v. State Board of Forestry*, 7 Cal. 4th 1215, 1236-37 (1994); *City of Arcadia, supra; Mountain Lion Foundation v. Fish & Game Commission*, 16 Cal. 4th 105, 132 (1997) ("In order to claim the exemption from CEQA's [environmental impact report] requirements, an agency must demonstrate strict compliance with its certified regulatory program") (emphasis added). Accordingly, the Staff Report, as a substitute CEQA document prepared pursuant to a certified regulatory program, must include a description of the project, alternatives to the project, and mitigation measures to minimize any significant adverse environmental impact. Pub. Res. Code, § 21080.5(d)(3)(A); CEQA Guidelines (14 Cal. Code Regs.) section 15187; 23 Cal. Code Regs., section 3777.

The Staff Report's CEQA analysis is far more abbreviated than CEQA allows. The Staff Report provides the barest of checklists in which every single impact category is simply checked as "No

Impact." Staff Report, Appendix D. This includes the categories of air quality, energy, hazardous waste, and solid waste (under utilities and service systems). Most remarkably, the "No Impact" box is checked in response to the question whether the project would "Require or result in the construction of new water or wastewater treatment facilities, the construction of which could cause significant environmental impacts?" The Staff Report then concludes (pp. 72-73) that "implementation of any of the proposed alternatives is not expected to induce additional growth as a result of perceived lessening of water quality protection requirements" or "contribute to a significant environmental impact, either collectively or individually" and that "there would be no adverse environmental impacts resulting from the actions proposed in the policy."

In CEQA analysis, environmental impacts of the proposed action and alternatives are compared to the baseline of existing conditions. CEQA Guidelines § 15125(a). When considering a new regulatory program such as the Policy, the lead agency must compare impacts and alternatives to the baseline of the current regulatory regime. Although it is not clearly stated in the Staff Report, we assume that the staff checked "No Impact" in each of these cases on the theory that existing regulations (including EPA's current interpretations as discussed above) already require it (e.g., the construction of new treatment facilities during compliance schedules). Only change in activities that otherwise would have occurred under existing programs must be considered as consequences of adopting the Policy, and must therefore be evaluated for potentially significant environmental impacts. Therefore, the Staff Report appears to assume, there would be no significant incremental impact attributable to the State Board's adoption of this Policy.

This logic is fundamentally flawed. First, as discussed above, the Policy would enshrine, as a matter of state law alone, an evolving interpretation of the CWA and EPA's compliance schedule regulations that goes beyond the requirements of federal law. Second, however, even if EPA's new interpretation which the State Board purports to follow is correct (which it is not), the Policy still goes beyond the requirements of federal law -- and it is the Staff Report itself which compels this conclusion. The Staff Report concedes that the CWA allows for compliance schedules longer than five or even ten years; "the CWA simply requires that water quality standards be met as soon as possible." Staff Report (pp. 7-8, 45-46).

Because the Policy imposes more restrictive time limitations on compliance schedules that permitted under federal law, the incremental consequences of those new restrictions as a matter of state law are impacts which must be evaluated under CEQA, not part of the regulatory setting baseline. To be specific, under the Staff Report's recommended Alternative 2.b, additional wastewater treatment facilities must be built or modified in order to comply with the stricter Policy requirements, during the five year time period allotted in order to achieve compliance with the proposed policy at the end of five years (or ten, in the event of "unforeseen circumstances"). Those facilities might have been built later, or not at all, under longer compliance schedules allowing time for completion of TMDLs which are reasonably expected to supersede the stringent permit requirements. For example, should the State Board adopt a ten-year compliance schedule (as provided in Alternative 2.c in the Staff Report), then dischargers clearly would not have to build those facilities in five years.

Since the Policy would foreseeably result in the construction of wastewater treatment facilities that would not otherwise be required under federal law, the State Board is required under CEQA to evaluate the potential environmental impacts of constructing or modifying such treatment facilities. Therefore, with respect to the prospect of new restrictions on compliance schedules as a consequence of this proposed Policy, the State Board must consider the following potentially significant impacts:

- Construction impacts such as storm water discharges, air emissions (including criteria and toxic pollutants), energy consumption, traffic, noise, etc. associated with construction of new treatment facilities that would otherwise have been constructed later or not at all, if no longer required following TMDL completion.

- Air emissions from operation of such treatment facilities.

- Energy consumption from operation of such treatment facilities.

- Solid and hazardous waste impacts from increased disposal of residual materials from such treatment facilities.

- Cumulative impacts in all of these categories.

Accordingly, the Draft Staff Report should be revised and re-circulated to properly address these and any other foreseeable environmental impacts of the Policy.