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February 20, 2008

Ms. Jeanine Townsend,
Acting Clerk
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
commentletters@waterboards.ca.gov

Re: Compliance Schedule Policy for NPDES Permits

Dear Ms. Townsend:

The Sacramento Regional County Sanitation District (District) provides sanitary sewer conveyance, treatment, and reclamation to over one million residents and thousands of commercial and industrial businesses in the greater Sacramento area. On average, over 165 million gallons of wastewater is collected, treated, and safely discharged each day. The Sacramento Regional County Sanitation District (District) appreciates the opportunity to provide these preliminary comments on the State Board's draft *Compliance Schedule Policy for NPDES Permits* ("*Draft Policy*"). The District appreciates the State Board's efforts in trying to develop a statewide policy for compliance schedules, and recognizes the challenge of trying to reconcile and make consistent the various Basin Plan provisions from six of the Regional Boards that currently allow compliance schedules.

Nevertheless, it appears that the *Draft Policy* seeks to take the most restrictive provisions from the various Regional Board Basin Plans and collectivize them into a single, extremely restrictive policy that is likely to have many substantial negative consequences for municipal wastewater treatment agencies. We share the concerns expressed by other regulated parties and associations - - such as the California Association of Sanitation Agencies, the Central Valley Clean Water Association, and the Partnership for Sound Science in Environmental Policy - - that the current *Draft Policy* could place NPDES permit holders in jeopardy of non-compliance with future NPDES permit limits, and therefore expose them to unwarranted monetary penalties and third-party "citizen suits."

The District believes that such a scenario is unnecessary, and that a reasonable statewide policy *can* be developed that satisfies federal and state requirements without putting NPDES permit holders in legal and financial jeopardy. We believe the main focus of the State Board in developing a statewide policy should be based on the following considerations:

1. Assure compliance with water quality standards and objectives "as soon as possible", as required by federal regulations;

2. Take into account the technical, economic and practical circumstances and limitations facing all NPDES permit holders; and

3. Assure that compliance actions imposed on municipal agencies to achieve new, revised or newly-interpreted water quality objectives require the least amount of energy resources, result in the fewest greenhouse gas emissions, and require the least amount of ratepayer and taxpayer dollars to accomplish.

The District is concerned that the current *Draft Policy* does not address these considerations, and therefore respectfully suggests that "Alternative 1b" as described in the *Draft Staff Report* dated December 4, 2007 be selected. The following specific comments elaborate on the District's concerns related to the *Draft Policy*.

The *Draft Policy* Should Not Limit Compliance Schedules to Five Years

The *Draft Policy* provides that compliance periods may be granted for ***no more*** than five years. There are two, extremely limited exceptions to this limitation, and neither provide any practical comfort to municipal wastewater treatment agencies. On the other hand, the fact that the "maximum" allowed compliance period to meet new, revised or newly-interpreted water quality objectives is only five years will put these agencies in substantial legal and financial jeopardy.

In 1994, the State Board's Division of Clean Water Programs determined that the entire timeline for a POTW to process a major treatment plant upgrade or construction project (including the SRF application, project design and environmental review, contracting, construction, and operations inspection and compliance certification) was approximately 11.8 years. (*See,* State Board SRF Loan Program Flow Chart, September 14, 1994.) Today, this timeline is even longer.

The environmental review process alone can take a significant amount of time and could be delayed due to circumstances beyond the control of the wastewater treatment agency. The District can readily attest to the amount of time it takes to conduct just the CEQA environmental review for a substantial treatment plant upgrade. The District began the preparation of a Draft EIR to expand its regional treatment plant in early 2000 and issued the draft EIR in August 2003. Eight years later, the EIR has still not been finalized.

Realistically, the time needed to design, review, finance and construct upgraded or new wastewater treatment facilities is more than fifteen years. These facilities are large, complex, and sometimes controversial projects that simply require more time to become operational than a decade or two ago. In addition, five year schedules are also unrealistic when time is needed to build facilities to remove constituents where the ability of the technology to perform

satisfactorily is largely unknown. Traditional wastewater technologies (through tertiary treatment) are designed around removal of BOD, suspended solids, nutrients, and pathogens. However, relatively little is known about the reliability of traditional technologies to remove certain metals and toxic organics to levels that are being placed in permits in recent years. In these cases, several years or more may be needed for studies and pilot tests to determine whether capital investments in new treatment processes will actually work.

For these reasons, the District supports "Alternative 3c" contained in the *Draft Staff Report*, which would allow compliance periods of up to fifteen years. The State Board staff rejected Alternative 3c, stating that fifteen years "may be so long as to be pointless as a deadline." (*Draft Staff Report* at page 50.) Nevertheless, 15 years is much more realistic under today's circumstances, as evidenced by the District's own, recent experience.

The State Board Should Promote Alternative Compliance Strategies.

The *Draft Policy* specifically prohibits alternative compliance strategies for achieving water quality objectives, providing that, "It is the intent of the State Water Board that compliance schedules for NPDES permits only be granted when the discharger must design and construct facilities or implement new or significantly expanded programs and secure financing, if necessary, to support these activities in order to comply with permit limitations..." (*Draft Policy*, ¶9 at page 2.) Moreover, the *Draft Policy* limits the authority of a Regional Board to issue a compliance schedule only where the Regional Board determines that the discharger must design and construct facilities or implement new or significantly expanded programs to comply with a permit limit. (*Draft Policy*, ¶2 at page 3.)

The District believes strongly that the State Board should promote - - not prohibit - - the use of alternative compliance strategies to achieve water quality objectives. Doing so is ***good*** for the environment, ***good*** for our ratepayers and taxpayers, and provides ***no less*** protection of beneficial uses. Some of the alternative strategies the State Board should promote include development of TMDLs and site specific water quality 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 watershed based strategies or pollutant offset or trading programs, where appropriate.

Forcing construction of capital facilities to achieve a specific effluent limit, instead of allowing dischargers to pursue these alternative compliance strategies are likely to result in hundreds of thousands or even millions of dollars *wasted*. Spending money to achieve an effluent limit based on an inappropriate water quality standard, for example, where it is probable that a site specific objective for the pollutant in that water body would result in a *higher* effluent limit - - yet still be protective of beneficial uses - - would be inefficient, wasteful, and result in no higher level of environmental protection.

We have reviewed federal law and regulations, and find no legal proscriptions that compliance schedules are available *only* for construction-based compliance strategies. In fact, these regulations leave to the states to determine the parameters and conditions for issuing compliance schedules. The District believes that pursuing a construction-based policy will result in wasteful energy demands and produce uncalculated greenhouse gas emissions, and will needlessly squander limited public financial resources.

The Functional Equivalent Document Fails to Consider Important CEQA Impacts

The *Draft Staff Report* is intended to serve as a "functional equivalent document" under CEQA and is required to analyze various environmental impacts associated with the *Draft Policy*. The *Draft Staff Report* fails to consider any potential air quality, energy or greenhouse gas emissions impacts associated with its construction-based strategy preference, and instead concludes that "there would be no adverse environmental impacts resulting from the actions proposed in the policy." (*Draft Staff Report* at page 73.)

If the State Board wishes to establish a statewide policy that will inevitably lead to the production of more greenhouse gases and result in higher electricity and other energy demands, it should, at a minimum, require its staff to present a more realistic picture of what results are reasonably likely to occur. Similarly, the State Board should require its staff to more fully analyze and present information related to alternative compliance strategies, such as site specific water quality objectives, water effects ratios, TMDLs, watershed-based permits, and pollution offset programs.

The *Draft Policy* Should Apply to NTR and CTR Constituents

The *Draft Policy* specifically prohibits compliance schedules related to effluent limits established for National Toxics Rule and California Toxics Rule constituents. This would prohibit compliance schedules for new, more restrictive effluent limits based on NTR and CTR criteria that currently exist. For example, some dischargers may have permit limits for pollutants where, in the future, new analytical techniques may be developed that result in lower detection limits. With that new data, it is possible that the Regional Board would further reduce the effluent limits. Without arguing that lower limits for those pollutants would not be appropriate, if the pollutants are listed on either the NTR or CTR, the *Draft Policy* would not allow the Regional Board to grant a compliance schedule for any more stringent permit limit.

This result is unreasonable, and should be rejected by the State Board.

The *Draft Policy* Should Address "New" Reasonable Potential for CTR Constituents

Another, similar problem to the one identified above is that the *Draft Policy* would not allow a compliance schedule for a discharger who, for the first time after May 18, 2010, shows "reasonable potential" for a given CTR pollutant in its waste stream. As such, the discharger would be required to comply immediately with the effluent, which may be technologically infeasible to do. The Proposed Policy makes no allowance for such a situation.

The *Draft Policy* defines a "newly interpreted water quality standard" to mean only those situations where *narrative* standards are replaced with *numeric* limits. (*Draft Policy*, ¶1.e at page 3.) As pointed out in the *Draft Staff Report*, this would prohibit compliance schedules for permits in which: (1) previously unregulated pollutants in a discharge are newly regulated because new data indicates reasonable potential for that pollutant; (2) improved analytical techniques result in new detections of a given pollutant in an existing discharge; (3) point of compliance for a receiving water limitation is changed; or (4) the dilution allowance for an existing discharge is changed. (*Draft Staff Report* at page 60.)

All of the examples above are situations where a specific discharger would either receive an effluent limit for the first time, or a more restrictive limit than in its existing permit. In neither circumstance has the discharger been given an opportunity to achieve compliance with the newly-interpreted ***numeric*** limit, and it is both reasonable and fair to provide a compliance period to enable the discharger to meet it. Not allowing a compliance schedule for these situations is similar to adopting a new standard altogether, and expecting the discharger to meet it immediately.

However, the *Draft Staff Report* offers an alternative to the State Board that would contemplate and accommodate this type of situation, and the District urges the State Board to adopt "Alternative 6.b.3." (*Draft Staff Report* at p. 60.) If this alternative is preferred by the State Board Members, a simple revision to Paragraph 1.e (which defines "newly interpreted water quality standard") of the Proposed Policy could be made as follows:

> "**Newly interpreted water quality standard** means a narrative or numeric water quality objective that, when interpreted during NPDES permit development . . . to determine the permit limitations necessary to implement the objective, results in a new or more stringent ~~numeric~~ permit limitation ~~more stringent~~ than the limit in the prior NPDES permit issued to the discharger."

The District believes it would be unreasonable and unfair to force a permit holder to immediately comply with a new permit limit that the permit holder could have no reason to expect would be imposed prior to the then-current reasonable potential analysis. The purpose of the compliance

schedule provision in federal law is to recognize that dischargers should be given a reasonable amount of time to come into compliance with these new permit limits. The District urges the State Board to select either Alternative 6.b.1 or 6.b.3.

The District appreciates the opportunity to submit these comments, and will be available to answer any questions Board Members may have at the March 18, 2008 State Board workshop. If you have any questions during the interim, please contact Terrie Mitchell at 916-876-6092.

Sincerely,

Wendell Kido
District Manager

cc: Mary Snyder – District Engineer
Terrie Mitchell – Manager, Legislative & Regulatory Affairs
Stan Dean – Plant Manager
Craig Johns – California Resource Strategies, Inc.