

ATTACHMENT TO RESOLUTION 2003-001

**BASIN PLAN AMENDMENT: LANGUAGE AUTHORIZING THE INCLUSION OF
COMPLIANCE SCHEDULES IN NPDES PERMITS**

(to be added to the *Water Quality Control Board, Los Angeles Region*, Chapters 3 and 4)

Add to end of Chapter 3, "Water Quality Objectives", of the *Water Quality Control Plan*:

COMPLIANCE WITH WATER QUALITY OBJECTIVES

"The Regional Board recognizes that immediate compliance with a new, revised or newly interpreted water quality standard¹ adopted by the Regional Board, the State Water Resources Control Board, or the U.S. Environmental Protection Agency, may not be feasible in all circumstances. Where the Regional Board determines that it is infeasible² for an existing discharger³ to comply immediately with an effluent limitation specified to implement such a standard, compliance shall be achieved in the shortest possible period of time, taking into account the factors identified in Chapter 4 for the implementation of compliance schedules. With the exception of a total maximum daily load (TMDL) adopted as a single permitting action, 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, revision, or interpretation of an applicable standard, whichever is the shorter period of time. In the case of a TMDL adopted as a single permitting action⁴, 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 based on the TMDL's support document, and may only be used when implementing a new, revised or newly interpreted water quality standard.

This provision authorizes compliance schedules for standards that are adopted, revised or newly interpreted after the effective date of this amendment (on the date approved by U.S. Environmental Protection Agency, pursuant to Federal Clean Water Act Section 303(c)(3)). Nothing

¹ "Newly interpreted water quality standard" means a narrative water quality objective that, when interpreted by the Regional Board during NPDES permit development (using appropriate scientific information and consistent with state and federal law) to determine the numeric effluent limits necessary to implement the narrative objective, results in a numeric effluent limitation more stringent than the prior NPDES permit issued to the discharger.

² "Infeasible" means that 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.

³ "Existing discharger" means any discharger that is not a new discharger. An existing discharger includes an increasing discharger (i.e., an existing facility with treatment systems in place for its current discharge that is or will be expanding, upgrading, or modifying its existing permitted discharge after a new, revised, or newly interpreted water quality standard becomes applicable.) A "new discharger" is defined as any building, structure, facility, or installation from which there is or may be a "discharge of pollutants" (as defined in 40 C.F.R. § 122.2) to surface waters of the Los Angeles Region, the construction of which commences after a new, revised, or newly interpreted water quality standard becomes applicable.

⁴ "Single permitting actions" are those where the Regional Board incorporates all the requirements to implement a TMDL through one NPDES permit. These actions would not require a Basin Plan amendment, but would require a technical staff report to support the permit requirements and any permit specified compliance schedule. Furthermore, the U.S. Environmental Protection Agency would still be required to approve the TMDL under federal Clean Water Act section 303(d).

in this provision limits the Regional Board's authority (1) to develop alternate implementation provisions for water quality objectives adopted or revised in the future, or (2) to rely on alternate implementation provisions authorized pursuant to State Water Resources Control Board policies for water quality control, state regulations, or federal regulations."

Add to Chapter 4, "Strategic Planning and Implementation", of the *Water Quality Control Plan* after section titled "Criteria for WDRs, WRRs, and NPDES Permit Limit and Provisions":

COMPLIANCE SCHEDULES

"Where the Regional Board determines that it is infeasible¹ for an existing discharger² to achieve immediate compliance with an effluent limitation specified to implement a new, revised or newly interpreted water quality standard³, whether numeric or narrative, adopted by the Regional Board, State Water Resources Control Board, or the U.S. Environmental Protection Agency, the Regional Board may establish a compliance schedule in a discharger's Waste Discharge Requirements (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 action⁴, but the compliance schedule must be as short as possible as determined in the TMDL based on the TMDL's support document, and may only be used when implementing new, revised or newly interpreted water quality standards.

¹ "Infeasible" means that 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.

² "Existing discharger" means any discharger that is not a new discharger. An existing discharger includes an increasing discharger (i.e., an existing facility with treatment systems in place for its current discharge that is or will be expanding, upgrading, or modifying its existing permitted discharge after a new, revised, or newly interpreted water quality standard becomes applicable.) A "new discharger" is defined as any building, structure, facility, or installation from which there is or may be a "discharge of pollutants" (as defined in 40 C.F.R. §122.2) to surface waters of the Los Angeles Region, the construction of which commences after a new, revised, or newly interpreted water quality standard becomes applicable.

³ "Newly interpreted water quality standard" means a narrative water quality objective that, when interpreted by the Regional Board during NPDES permit development (using appropriate scientific information and consistent with state and federal law) to determine the numeric effluent limits necessary to implement the narrative objective, results in a numeric effluent limitation more stringent than the prior NPDES permit issued to the discharger.

⁴ "Single permitting actions" are those where the Regional Board incorporates all the requirements to implement a TMDL through one NPDES permit. These actions would not require a Basin Plan amendment, but would require a technical staff report to support the permit requirements and any permit specified compliance schedule. Furthermore, the U.S. Environmental Protection Agency would still be required to approve the TMDL under federal Clean Water Act section 303(d).

The compliance schedule shall include a time schedule for completing specific actions (including interim effluent limits) that demonstrate reasonable progress toward attainment of the effluent limitations and, thereby, water quality standards. The schedule shall contain a final compliance date, based on the shortest possible time (determined by the Regional Board at a public hearing after considering the factors identified below) required to achieve compliance. In addition, in all cases, the NPDES permit findings shall specify the final effluent limitations. Except in the case of a TMDL adopted as a single permitting action, an NPDES permit may not include a compliance schedule that extends beyond five years from the date of permit issuance, reissuance or modification, or more than ten years from the date of adoption, revision, or interpretation of the applicable water quality standard, whichever is the shorter period of time. Compliance schedules are authorized by this provision only for those effluent limitations that implement water quality standards adopted, revised or newly interpreted after the effective date (on the date approved by U.S. Environmental Protection Agency, pursuant to Federal Clean Water Act Section 303(c)(3)) of this provision. Nothing in this provision limits the Regional Board's authority (1) to develop alternate implementation provisions for water quality objectives adopted or revised in the future, or (2) to rely on alternate implementation provisions authorized pursuant to State Water Resources Control Board policies for water quality control, state regulations, or federal regulations.

To document the need for and justify the duration of any such compliance schedule, a discharger must submit the following information, at a 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."