



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

NOV 08 2012

Samuel Unger, Executive Officer
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Dear Mr. Unger:

The U.S. Environmental Protection Agency (the EPA) has reviewed your August 31, 2012 letter regarding the Los Angeles Regional Water Quality Control Board (LARWQCB) and the California State Water Resources Control Board (State Board) request for authority to provide compliance schedules consistent with the waste load allocations (WLAs) based on California Toxics Rule (CTR) criteria, pursuant to 303(c) of the Clean Water Act (CWA). I am pleased to inform you that we are approving the authorization.

The approval is based on the State's Total Maximum Daily Load (TMDL) for Toxic Pollutants in Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters (Harbors Toxics TMDL) adopted by the LARWQCB as Resolution Number R11-008 on May 5, 2011, approved by the State Board as Resolution Number 2012-0008 on February 7, 2012, and approved by the Office of Administrative Law on March 22, 2012. The EPA approved the TMDL pursuant to CWA section 303(d)(2) on March 23, 2012, and noted that our approval did not include the TMDL implementation plan, as it is not required under current federal regulations.

Subsequently, on May 30, 2012, the EPA verbally requested clarification of the State Board and LARWQCB's intentions regarding a compliance schedule authorization request pursuant to 303(c)(2) because it was unclear from the TMDL what process would be implemented to assure compliance with 40 CFR 122.47 requirements for compliance schedules to be incorporated into National Pollution Discharge Elimination System (NPDES) permits. The clarification was received by the EPA on August 31, 2012, and is the subject of this approval.

The Compliance Schedule Authorization Request

The request is for authority pursuant to 303(c)(2) to provide compliance schedules consistent with WLAs, including interim WLAs, that are based on CTR criteria and the associated implementation schedule in the Harbors Toxics TMDL, which will be included in NPDES permits pursuant to the CWA section 301(b)(1)(c).

The request specifies that the LARWQCB may authorize compliance schedules in NPDES permits for up to 20 years for Non-MS4 stormwater Dischargers (General Construction, General Industrial and individual industrial permittees) for Copper, Lead, Zinc, DDT, Dieldrin, Total PCBs, Chlordane, and Pyrene, and for other Non-stormwater Dischargers, for Copper, Lead, and Zinc, consistent with the Implementation Plan in the Harbors Toxics TMDL.

Today's Action

Pursuant to CWA section 303(c) and the implementing federal regulations at 40 CFR 131, the EPA hereby approves this compliance schedule authorizing provision. Section 303(c) of the CWA requires the EPA to approve or disapprove new or revised state-adopted water quality standards. The State regulatory provisions subject to the EPA's approval authority under section 303(c) are those addressing antidegradation, beneficial uses, water quality criteria, and certain policies and procedures for the implementation of water quality standards for surface waters. Under the EPA's water quality standards regulations, a state has discretion to include in its standards "policies generally affecting their application and implementation, such as mixing zones, low flows and variances" 40 C.F.R. 131.13. Though discretionary with the state, the Administrator has stated that authorizing provisions for compliance schedules such as that described in this request are subject to the EPA's review under 40 CFR Section 131.13. In re Star-Kist Caribe, Inc., 3 E.A.D. 172, 182-183, n16 (Adm'r 1990), modification denied, 4 E.A.D. 33 (E.A.B. 1992); In re City of Ames, 6 E.A.D. 374 (EAB1996). As such, authorizing provisions for compliance schedules are subject to the EPA's review and approval under the EPA CWA section 303(c).

Basis for Approval

In regards to this request to approve a compliance schedule authorizing provision, the EPA based its decision on CWA section 303(c) and implementing regulations at 40 CFR 131.5 and 131.6 in conjunction with the approved Harbors Toxics TMDL (which included extensive public participation). Specifically, the EPA focused on the 20-year implementation plan and schedule in this Harbors Toxics TMDL.

The EPA also considered guidance regarding compliance schedule authorizing provisions and the requirements at 40 CFR 122.47 for incorporating compliance schedules in specific NPDES permits. In 2007, the EPA headquarters clarified how permitting authorities should incorporate compliance schedules in specific permits after the State has clearly indicated in its water quality standards or implementing regulations that it intends to allow them ("Compliance Schedules for Water Quality-Based Effluent Limitations in NPDES Permits," Memorandum from James A. Hanlon to Alexis Strauss, May 10, 2007, enclosed).

As discussed in the 2007 memorandum, the permitting authority should document the basis for its conclusions that the compliance schedule is necessary and appropriate for that permit and will result in compliance as soon as possible within the timeframe allowed by the compliance schedule authorizing provision. The compliance schedule must provide an enforceable sequence of actions or operations that will lead to compliance with the effluent limitation along with associated interim milestones and schedules. As explained in its clarifying letter of August 31, 2012, the LARWQCB understands that the requirements of 40 CFR section 122.47 must be satisfied and documented on a permit-by-permit basis when including compliance schedules in any NPDES permit and intends to follow this approach once authorized.

Under the current statewide compliance schedule policy, compliance schedules for implementing WLAs in TMDLs may exceed 10 years, as specified in an adopted TMDL Implementation Plan (State Water Resources Control Board Resolution No. 2008-0025, "Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits," ("Policy") paragraph (6)(c)). However, the Policy does not apply to CTR criteria; the CTR had a compliance schedule authorizing provision when

promulgated but that provision had a sunset date of May 2005. For this reason, the LARWQCB would not be able to include a compliance schedule in any specific NPDES permit for CTR criteria without an approved compliance schedule authorizing provision.

Under the Policy, any resulting schedule in a specific NPDES permit must be both as short as possible and within the timeframe set forth in the TMDL implementation plan. The LARWQCB considered the technical issues and complexities of the multi-party agreements and programs to be implemented to achieve the WLAs and concluded that the 20-year implementation schedule in this Harbor Toxics TMDL provides sufficient time for flexibility to deal with uncertainties while achieving water quality as soon as possible. While the compliance schedule authorization provision establishes an outer bound limit of 20 years, it does not presume or guarantee that a specific discharger may receive a 20 year compliance schedule. Rather, each specific permit containing a compliance schedule must document that the schedule in question will lead to attainment with the permit's water quality-based effluent limit (WQBEL) "as soon as possible" and no later than 20 years after the relevant TMDL with the WLA is issued.

Furthermore, the LARWQCB states that during the incorporation of WLAs into permits as WQBELs, the Water Boards will provide justification supporting the compliance schedules to ensure that the compliance schedules meet all of the requirements of 40 C.F.R. section 122.47.

Public Participation

The EPA compliments the State on its efforts to include the public in the development and review of new and revised water quality standards. Public involvement is an integral component of a successful water quality program. Based upon our review of the administrative record for the subject TMDL, the public review procedures followed by the State in the development of State Board Resolution Number 2012-0008 and the LARWQCB Resolution Number R11-008 were consistent with the procedural requirements for public participation in triennial reviews, adoption, and revision of state water quality standards.

Endangered Species Act Section 7

Section 7(a)(2) of the Endangered Species Act (ESA) states that each federal agency shall, in consultation with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service (the Services), ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any federally-listed endangered or threatened species (listed species) or result in destruction or adverse modification of designated critical habitat of such species. Consistent with the requirements of Section 7(a)(2) and implementing regulations at 50 CFR Part 402, EPA has initiated consultation with the Services regarding our action approving the compliance schedule authorizing provision under the Clean Water Act. We anticipate concluding consultation in the near future. Although we do not believe our action will cause any impacts of concern on listed species or designated critical habitat, our approval is subject to the outcome of the ESA Section 7(a)(2) consultation process.

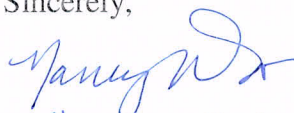
Conclusion

This approval action authorizes the LARWQCB to include compliance schedules, provided they are consistent with the CWA and the EPA regulations, in NPDES permits issued to existing dischargers for

more stringent WQBELS based on WLAs in the State's TMDL for Toxic Pollutants in Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters.

In closing, the EPA commends the State Water Board staff for its excellent work on the TMDL and implementation schedule. If there are any questions regarding our action, please contact Janet Hashimoto at (415) 972-3452 or Suesan Saucerman at (415) 972-3522 of the Standards and TMDL Office. As always, we look forward to continued cooperation with the State in achieving our mutual environmental goals.

Sincerely,



November 8, 2012
Nancy Woo, Acting Director
Water Division

Enclosure

cc: Deborah Smith, Chief Deputy Director, LARWQCB
Renee Purdy, Section Chief of Regional Programs, LARWQCB
Tom Gardner, USEPA, Office of Water