

**California Association of Sanitation Agencies
Central Valley Wastewater Managers Association
League of California Cities
Southern California Alliance of POTWs
Tri-TAC**

March 27, 2001

Arthur G. Baggett, Jr., Chair
State Water Resources Control Board
1001 "I" Street
Sacramento, CA 95814

**SUBJECT: INTERIM PERMIT STRATEGY FOR EFFLUENT
DEPENDENT/DOMINATED WATERS**

Dear Chairman Baggett:

We are writing on behalf of the undersigned organizations to urge that the SWRCB act on a matter of great importance and urgency. Specifically, we request that your Board direct staff to develop an interim strategy for permits issued for discharges to effluent dependent/dominated waters (EDWs). Without such a strategy, the regional boards will continue to issue permits containing unreasonable and costly requirements that will ultimately prove unnecessary when the SWRCB's long-term EDW Policy is adopted.

We realize that development of a long-term approach to EDWs will take several years. Our organizations stand ready and willing to assist with that effort, and our members have provided detailed comments to your staff regarding potential courses of action. However, California faces an immediate permitting crisis that cannot await the development of the long-term fix.

Recently issued permits (e.g., Vacaville and Davis), which contain stringent and costly effluent limitations driven by out-of-date, rigidly applied Basin Plan interpretations and beneficial use designations that exist only on paper, provide evidence of our concern. Similarly unreasonable requirements are expected to be imposed on communities throughout the State in the coming months. Compliance with these requirements will be extremely costly, both in terms of industrial, commercial, and domestic sewer rate increases and greater energy demand. We believe that sufficient flexibility exists under federal and state law to defer imposition of these harsh limitations during the time required to finalize the EDW Policy. The regional boards, however, are either unaware of these alternatives or unwilling to utilize them.

For these reasons, we believe it is essential that the SWRCB develop an approach to permitting in EDWs during this interim period and provide clear direction to the regional boards. The strategy should, at a minimum, address the following:

- Permits issued to EDW discharges should recognize the SWRCB's findings in Order WQ 2001-06 (the *Tosco* decision) regarding the development of permit limits in situations where the water body is included on the 303(d) list, but before a Total Maximum Daily Load (TMDL) has been developed. EDW permits should also reflect the SWRCB's Order with respect to the derivation of interim effluent limits, pollution prevention plans, and compliance schedules.
- Regional boards should fully utilize the provisions of the SIP that provide flexibility and allow for the implementation of interim requirements while additional studies are being completed and/or additional data are being gathered. Additionally, the SWRCB should advise the regional boards that the development of a statewide EDW Policy is "a future regulatory development" under Section 2.2.2 (B) of the State Implementation Policy and that interim, rather than final effluent limits, should be imposed in the effluent limitations section of the permits. Potential final effluent limits could be referenced in the findings, subject to change under the new EDW requirements.
- Regional boards should be instructed to discontinue the rote application of the so-called "tributary rule," under which upstream waters are required to meet all of the requirements of the designated downstream waters, without regard to the past, present and probable future uses in the actual receiving water or the effects of the discharge on the downstream water. In many cases, the pollutants actually reaching the downstream water from the discharge are *de minimis*, while the costs (and energy demand) to meet the very stringent end-of-pipe limitations are enormous.
- The point of compliance with effluent limitations driven by MUN or REC-1 designations should be defined as the point within the water body where the particular use exists. For example, if a discharge is to an EDW that is not used for drinking water, and effluent limitations are imposed to protect a downstream drinking water use, the discharger's compliance with those limitations should be measured in the downstream receiving water, rather than at the end-of-pipe.
- Regional Boards should be directed to review the discharge situation to determine if the receiving water is truly a navigable water within the definition of a "water of the U.S." (See *Solid Waste Association of Northern Cook Counties v. United States Corps of Engineers*, U.S. Supreme Court Case No. 99-1178 (2001). Under this recent U.S. Supreme Court decision, some EDW discharges may not be to navigable waters and, thereby, not to "waters of the U.S." In these cases, the CTR criteria driving many of the

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stringent effluent limitations in EDWs should not be applied unless the Regional Board has adopted Basin Plan numeric water quality objectives for toxic pollutants that apply to non-NPDES discharges.

Additional detail regarding these recommendations is included in the March 14, 2001 letter submitted on behalf of CASA, Tri-TAC and SCAP, a copy of which is attached.

We cannot overstate the importance of this issue for California's economic health and the need for strong SWRCB leadership. We would be pleased to meet with you or your staff to discuss our recommended strategy. Thank you for your interest in and attention to this matter.

Sincerely,

Roberta Larson, Director of Legal and Regulatory Affairs
California Association of Sanitation Agencies

Phil Bobel, Chair
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