

Permits Committee –

Permit Committee Meeting Date: 12/19/06
Executive Board Meeting Date: 21/21/06

Report to BACWA Board

Prepared By: Arleen Navarret Committee Chair

Committee Request for Board Action: See Action items below

Business	Action Item	Due Date
<p>The December meeting was attended by Water Board Staff – Lila Tang, Bill Johnson, and Christine Boschen</p> <p>NPDES Permit Reissuance Process</p> <p><u>Schedule Changes:</u> Lila updates the NPDES reissuance schedule monthly. Revised schedules are posted on the Water Board website. If an agency moves up on the reissuance calendar, Water Board staff will try to notify the agency, however that does not always happen. Agencies should routinely check the schedule. Some staff changes have been made – you can check the Phone List on the website for the full name of staff assigned. <u>Note the columns to the right on the schedule</u> – they inform you when your permit will go to a consultant for preparation and when RPA results are expected.</p> <p><u>Administrative Drafts and Agency Comment Period:</u> Water Board staff are attempting to provide Administrative Drafts to the agency before the TO is released publicly, however there continues to be a very short period to submit comments. Note to Member Agencies – engage in the process and check with your permit writer to get RPA results for review as soon as the schedule shows they should be available.</p>		
<p>NPDES Permit Issues – What Agencies Need to Prepare For</p> <p><u>Blending:</u> Those agencies that blend will receive a letter from the Water Board indicating the need for a No Feasible Alternatives Analysis that identifies measures in place to reduce blending events. The WB letter indicates a minimum effort to include changes at the facility, the timing of on-going projects or construction, and I&I reduction schedules. USEPA’s position is that blending is currently prohibited by the CWA and can only be allowed if included in the permit as a bypass. The most recent effort by CMSA, which was far beyond the minimum requirements, resulted in a comment letter by USEPA indicating acceptance of the NFAA, which was addressed in the Fact Sheet, however an opinion that documentation in the permit itself was inadequate. USEPA is asking the WB to include in the permit hydraulic and treatment improvements to reduce blending with enforceable schedules for project completion. Note to Member Agencies that Blend – Facilities will need to commit to permit schedules, therefore be realistic about time frames under which projects can be completed. Action – BACWA to contact NACWA/Headquarters to determine if language changes to Blending Policy were made to address initial permit cycle and expectations of Policy regarding initial NFAA.</p> <p><u>Bacteria:</u> Those agencies that have an alternate Bacteria limit in their existing permit <u>must</u> submit a copy of the study conducted/used that allowed the application of the alternate limit. New permits are including an enterococcus limit in some cases. Since the Basin Plan identifies shellfish harvesting as a beneficial use for the entire Bay, and since there is no enterococcus criterion to protect for shellfish harvesting, permits are also including a fecal coliform limit. An alternative approach the Water Board is allowing at this time is to have a total coliform limit only. Action – Need to prioritize bacteria issues and move discussion at joint BACWA/Water Board/USEPA meetings toward dilution credits.</p> <p><u>Dilution:</u> Lila mentioned that as a result of the SIP, the issue of dilution credits in some Basins is being raised, specifically that Water Boards cannot grant dilution arbitrarily. At some point, Region 2 may need to re-address 10:1 dilution. Lila suggested that agencies that performed dilution studies in the past resurrect them because they may be needed to justify continuation of the existing 10:1 dilution. She indicated it was unlikely that greater than 10:1 dilution would be granted. Will keep in touch with Lila on the development of this item.</p>		

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<p>TMDL Compliance Schedules: As a result of the October 23 and November 29, 2006 USEPA letters referencing TMDL compliance schedules, USEPA is requiring final effluent limits for those pollutants for which SSOs and TMDLs are scheduled be included in the enforceable part of the permit if interim limit are provided, regardless of the expiration date of the interim limit. Water Board staff have been including final limits on these types of pollutants in the fact sheet previously. This new position by USEPA also means that the permits will <u>no longer</u> contain language that requires agencies to support the development of SSOs or TMDLs. The permit now must require specific activities that the permittee must implement to move toward compliance with the final limits. The permits already require pollution prevention programs. Water Board staff will work with enhancing P2 language to address this USEPA issue. Eventually it is expected that agencies may need to show how P2 programs have reduced pollutant loading. This change will be made to those permits that are being adopted in January 2007 (CMSA, CCCSD, SBSA).</p> <p><u>July 2009 Report:</u> The requirement currently being included in permits, that one year prior to the end of most existing compliance schedules, POTWs will need to submit a report that identifies efforts that will ensure compliance with final effluent limits (Cu, Hg) will <u>not go away</u> due to the tightening of requirements related to compliance schedules.</p> <p><u>Discussion with USEPA:</u> Lila feels that USEPA's position on this issue is firm, however following the permit meeting suggested it may be useful to explore EPA's flexibility on what is expected from permittees to meet these limitations – to be included on the next BACWAWater Board/USEPA agenda.</p>		
<p>Anti-Backsliding and Exceptions to Anti-Backsliding: The provisions for anti-backsliding have not changed since the 1987 CWA – final effluent limits cannot be set that are less stringent than final effluents in the previous permit, with 6 exceptions. The following three issues related to anti-backsliding were highlighted at the meeting:</p> <p><u>New Information:</u> can apply only where the revised limitations result in a net reduction in pollutant loadings</p> <p><u>Material & Substantial Alterations:</u> good performance typically leads to lower effluent limits; agencies have concerns about meeting lower effluent limits when service areas increase; effluent limits can be increased if there is an increase in loading to the service area as long as current performance is either maintained or improved.</p> <p><u>Non-attainment Waters:</u> WQBELs may be relaxed as long as the existing effluent limit is based on a TMDL or WLA and the cumulative effect of such revisions assures attainment of the WQS.</p>		
<p>Cyanide SSO: The Region 2 Water Board approved the SSO on December 13, 2006. USEPA supported the adoption of the SSO with reservation regarding the mixing zones applied to shallow water dischargers. USEPA stated they reserve the right to contest mixing zones permit by permit during the reissuance process. At this point it is unclear what, if any, action USEPA will take. The State Water Board has been trying to develop a new mixing zone policy since the SIP was adopted. Because the cyanide SSO process still needs action from the State Water Board and USEPA before the criteria can be implemented, current permits will continue to use the 1 ppb WQC. Dischargers who qualify will be allowed a compliance schedule. Once the SSO is official, the 2.9 WQO will automatically be implemented in permits that have recently been written to allow this automatic change.</p>		