

DRAFT

Supplemental material: Policy Forum #3, February 8, 2013.

The information below was prepared to assist with Policy Forum discussions surrounding adoption of human health-based surface water criteria and revised implementation tools. The text box below supplements other information on Pinto Creek and requirements for new discharges into 303(d) listed waterbodies.

New discharges after a TMDL has been completed: The two-part test

Question 1 : Can a new discharger (of a pollutant causing the impairment) to (1) a waterbody segment that has a TMDL completed, and (2) the criteria are **not yet** met, be permitted?

Answer: Yes. A new discharger must meet **both** conditions in the CFR below to allow a new discharge of a pollutant causing the impairment.

Question 2 : Must compliance schedules for all other dischargers of the particular pollutant be in place before this new discharger of the pollutant causing the impairment be permitted, as per the Pinto Creek decision?

Answer: Yes. This is fulfilled if all discharges that need compliance schedules to get the waterbody segment back into compliance are under compliance schedules. This evaluation is fact-specific and situation-specific. Placing all required compliance schedules in place can be time consuming, and could last for several years.

The applicable regulation is 40CFR122.4(i)

*“...The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by sections 301(b)(1)(A) (BPT) and 301(b)(1)(B) (Secondary treatment) of CWA, and for which the State or interstate agency has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that: (1) There are sufficient remaining pollutant load allocations to allow for the discharge; **and** (2) The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The Director may waive the submission of information by the new source or new discharger required by paragraph (i) of this section if the Director determines that the Director already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this paragraph (i)(2) is to be included in the fact sheet to the permit under Section 124.56(b)(1) of this chapter.”*