

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – OFFICE OF ENFORCEMENT
NOVEMBER 17, 2009**

ITEM 9

SUBJECT

CONSIDERATION OF ADOPTION OF THE PROPOSED STATEWIDE WATER QUALITY ENFORCEMENT POLICY

DISCUSSION

This proposed Water Quality Enforcement Policy (Policy) revises the existing 2002 Enforcement Policy.

The State Water Resources Control Board (State Water Board) solicited comments from stakeholders at 3 workshops and created an Executive Steering Committee (comprised of State Water Board upper management and 2 Regional Water Quality Control Board (Regional Water Board) Executive Officers) to evaluate comments and provide input for the proposed Policy revisions. The overarching goal of the proposed Policy is to protect and enhance the quality of the waters of the State by defining an enforcement process that addresses water quality problems in the most efficient, effective, and consistent manner. It is intended to better enable the Water Boards' staff to expend its limited resources in ways that openly address the greatest needs, deter harmful conduct, protect the public, and achieve maximum water quality benefits.

More specific goals and a summary of the proposed revisions include:

- Greater focus on “policy” statements and minimization of “guidance”, except where necessary to provide clarity;
- Acknowledgment of the specific needs and limitations of POTWs and sewage collection systems that serve small communities;
- New violation ranking criteria to help Water Board staff and management more readily identify the highest priority violations;
- Process for prioritizing enforcement actions;
- Clarification of circumstances which prompt the State Water Board to exercise its enforcement authority;
- Penalty calculation methodology to help ensure consistency in the Water Boards' approach and analysis of factors when determining ACL penalty amounts;
- More realistic timeframe for issuance of MMPs;
- Language update to reflect recent statutory changes to the definition of “small communities” for purposes of determining when a discharger qualifies for applying a mandatory minimum penalty toward a compliance project;
- Policy statements regarding the definition of a “Discharge Monitoring Report”;
- Policy statements limiting the authority for a Regional Water Board to allow compliance projects in ACLs unless expressly provided for in statute;
- General alignment of the Policy with new/existing statutory authorities;

- Mechanism to allow dischargers to make capital or operational improvements beyond those required by law (that are separate from projects designed to merely bring a discharger into compliance);
- Requirements for timely documentation of violations and enforcement actions in Water Board databases; and
- Requirements to keep the public informed of State and Regional Water Board performance with regard to enforcement activities.

POLICY ISSUE

Should the State Water Board adopt the proposed Water Quality Enforcement Policy.

FISCAL IMPACT

Staff does not anticipate any increase or decrease in overall program costs.

REGIONAL BOARD IMPACT

Yes, all the Regional Water Boards will be required to implement their enforcement programs in accordance with this Enforcement Policy. The proposed changes which will have the greatest impact the Regional Boards include:

- New violation ranking criteria to help Water Board staff and management more readily identify the highest priority violations;
- Proposed process for prioritizing enforcement actions to ensure resources are expended on the highest priority cases;
- Penalty calculation methodology to help ensure consistency in the Water Boards' approach and analysis of factors when determining ACL penalty amounts;
- More realistic timeframe (18 months) for issuance of MMPs;
- Limitations on use of compliance projects; and,
- Requirements for timely documentation of violations and enforcement actions in Water Board databases;

STAFF RECOMMENDATION

Adopt the proposed Policy.

State Water Board action on this item will assist the Water Boards in reaching Goal 6 of the Strategic Plan Update: 2008-2012 to enhance consistency across the Water Boards, on an ongoing basis, to ensure our processes are effective, efficient, and predictable, and to promote fair and equitable application of laws, regulations, policies, and procedures. In particular, approval of this item will assist in fulfilling Objective 6.1 to target consistency improvements in process and policy for Water Board enforcement activities to promote compliance.

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2009-**

ADOPTION OF THE WATER QUALITY ENFORCEMENT POLICY

WHEREAS:

1. California Water Code (WC) section 13001 provides that it is the intent of the Legislature that the State Water Resources Control Board (State Water Board) and each Regional Water Quality Control Board (Regional Water Board) shall be the principal state agencies with primary responsibility for the coordination and control of water quality. The State and Regional Water Boards are required to conform to and implement the policies of the Porter-Cologne Water Quality Control Act (Division 7, commencing with WC section 13000) and to coordinate their respective agencies so as to achieve a unified and effective water quality control program in the state;
2. WC section 13140 provides that the State Water Board shall formulate and adopt State Policy for Water Quality Control;
3. WC section 13142(c) provides that State Policy for Water Quality Control shall consist of principles and guidelines deemed essential by the State Water Board for water quality control;
4. WC section 13240 provides that Water Quality Control Plans (Basin Plans) shall conform to any State Policy for Water Quality Control;
5. The State and Regional Water Boards have broad authority to take a variety of enforcement actions under the Porter-Cologne Water Quality Control Act;
6. The Water Quality Enforcement Policy requires that it be reviewed and revised, as appropriate, not later than every five years;
7. The State Water Resources Control Board (State Water Board) solicited comments from stakeholders at three public workshops and created an Executive Steering Committee (comprised of State Water Board upper management and two Regional Water Board Executive Officers) to evaluate comments and provide input for the proposed Policy revisions;
8. The State Water Board published a public notice of the proposed policy on July 15, 2009, and accepted written comments until September 21, 2009. After consideration of the comments received, the proposed policy was revised;
9. Adoption of this policy is categorically exempt from the California Environmental Quality Act under California Code of Regulations, title 14, section 15321.

DRAFT

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Rescinds [Resolution 2002-0040](#) adopting the February 19, 2002, Water Quality Enforcement Policy;
2. Adopts the November 17, 2009, [Water Quality Enforcement Policy \(WQEP\)](#);
3. Directs the Office of Enforcement, after two years following approval of the WQEP by the Office of Administrative Law (OAL), to evaluate and report on the use of the penalty calculation methodology, and,
4. If, during the OAL approval process, OAL determines that minor, non-substantive modifications to the language of the Policy are needed for clarity or consistency, the Executive Director or designee is directed to make such changes and inform the State Water Board of any such changes.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 17, 2009.

Jeanine Townsend
Clerk to the Board