

Water Quality Enforcement Policy

November 17, 2009



Ann Marie Ore
Office of Enforcement

Overview

- Enforcement Policy Board Hearing - 10/20/09
- Closed Hearing & Continued Item
- Draft Responses To All Comments Complete
 - Responses to Comments Received by 9/21- Posted 10/21
 - Responses to Comments Received at Board Hearing
 - Posted 11/5
- Change Sheet No. 1

Facilities Serving Small Communities

Comments:

- 1) Revised definition of small communities is confusing – should revert to prior definition
- 2) Revised definition of small communities is an improvement

Response: No change to definition

Consistent with the definition of small communities in Water Board's Small Community Wastewater Strategy

Enforcement Priorities for Discretionary Actions

Comment: Evidence for violation classification should be a matter of public record to ensure penalties are warranted

Response: If formal enforcement is taken on a violation, information relevant to the prioritization of violations will be part of the public record

Penalty Calculation Methodology

1. Comment: Concern regarding standard of review for penalties

Response: “. . . State Water Board will generally defer to the decisions made by the Regional Water Boards . . .”

2. Comment: Requested language clarifications

Response:

- Plausible changed to “reasonably expected”
- Defined potential receptors as: “those identified considering human, environmental, and ecosystem health exposure pathways”

Penalty Calculation Methodology

3. Comment: Revised language regarding adjustment factors for multiple violations now limits the Water Board's discretion

Response: Edit simply makes text more readable

~~“The violation occurs on separate days but is one which continues for more than one day.”~~

4. Comment: Request that Policy only allow for per day OR per gallon assessments - Not Both

Response: Added language to ensure appropriate assessment of penalties, and to clarify when either or both per gallon & per day assessments should be used

Penalty Calculation Methodology

5. Comment: Lower the \$/gallon value for spills of recycled water

Response: The Policy already includes a lowered amount for these spills

6. Comment: Remove language re: increasing penalty with regard to ability to pay

Response: This language was removed

Mandatory Minimum Penalties

1. Comment: Policy should limit enforcement response to either MMPs or discretionary ACLs - Not Both

Response: Water Boards are not authorized to do both
2. Comment: Limit MMPs for certain reporting violations

Response: Requested changes not authorized by statute
3. Comment: Require staff to notify permittees of violations within 30 days

Response: MMP statute doesn't require notification before discharger is liable

Mandatory Minimum Penalties

4. Comment: Policy statement regarding detection levels and MMPs is contrary to statute.

Response: Change Sheet #1

- For discharges of pollutants subject to the State Water Board's "Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California," or the "California Ocean Plan", where the effluent limitation for a pollutant is lower than the applicable Minimum Level, any discharge that: (1) equals or exceeds the Minimum Level; and (2) exceeds the effluent limitation by 40 percent or more for a Group 1 pollutant or by 20 percent or more for a Group 2 pollutant, is a serious violation for the purposes of California Water Code section 13385(h)(2).

Storm Water Enforcement

Comment: New language appears to circumvent Storm Water Enforcement Act requirements

Response: SWEA supplements and does not supplant other laws relating to the discharge

Performance Measures

Comment: Performance measure for evaluating compliance rates skews the true compliance and effectiveness of Water Board programs

Response: The compliance rate measure is consistent with US EPA's and the Water Boards are continually evaluating all measures for improvement