



February 3, 2017

Via electronic mail to commentletters@waterboards.ca.gov

Jeanine Townsend, Clerk of the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Re: Comment Letter - Variance Policy - Scoping Comments

Dear Ms. Townsend:

On behalf of the County of Orange and all city MS4 permittees under permits issued by the Regional Water Quality Control Boards, Santa Ana and San Diego regions, we write to express our support for the proposal in the January 23, 2017 scoping document, regarding establishment of a statewide water quality standards variance policy (Variance Policy) that would authorize the State Water Resources Control Board (State Board) and the Regional Water Quality Control Boards (Regional Boards) to approve variances with respect to water quality standards. As State Board staff begins work on developing such a policy, we offer the following comments and suggestions for consideration:

1) The scoping document indicates the proposed Variance Policy would state that "the variance from a water quality objective shall be for the specific pollutant(s)." It also states that "all other applicable water quality standards not specifically addressed by the variance remain applicable." In order to operate as intended, the Variance Policy should make clear that a variance from meeting a numeric water quality standard for a given pollutant would also provide an exception to meeting related narrative provisions in the permit that would otherwise apply to the same pollutant. For example, if a variance from meeting a numeric water quality objective for ammonia is authorized, to be effective, the scope of the variance needs to encompass any other narrative restrictions that may be contained within the permit, that prohibit pollution, nuisance, toxicity or degradation related to ammonia, provided the discharge complies with the specific terms and conditions of the variance. A variance that applies solely to the numeric water quality objective for a given pollutant, but not to the related narrative provisions that also restrict the discharge of that same pollutant, will not provide the permitting flexibility in relief that was intended when the variance was granted.

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2) The proposed Variance Policy states that a "variance from applicable water quality standards may be allowed in certain cases where the appropriateness of the specific water quality objective is questionable." It is unclear what the phrase "the appropriateness of the specific water quality objective is questionable" means. Clarification of this phrase is required, as it related directly to the standard for when a variance may be allowed. To the extent this language is intended to reflect the standard in 40 C.F.R. 131.14(b)(2)(i) pertaining to variances from attaining a designated use and criterion based on feasibility, we suggest the Variance Policy track the language of the federal regulation. We note that, under 40 C.F.R. 131.14(b)(2)(i), one way to demonstrate infeasibility is to show that one of the factors listed under 40 C.F.R. 131.10 (g) concerning use attainability is met. We further note that in the event one of the 40 C.F.R. 131.10 (g) factors can be met, a variance may be an appropriate interim vehicle to provide the applicable water quality standard, should the State Board and EPA consider revision to the underlying water quality standard. We suggest that the Variance Policy allow for variances to be authorized where there presently is no feasible, practicable or reasonable means of complying with a water quality objective and prohibiting the discharge is also infeasible, impracticable or unreasonable. See, for example, the current variance policy adopted by the Central Valley Regional Board (Res. No. R5-2014-0074) and subsequently approved by the State Board (Res. No. 2015-0010).

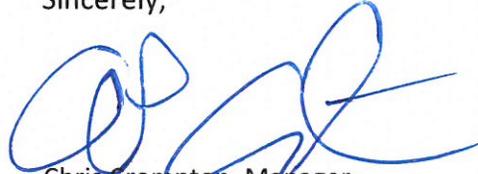
3) Finally, the proposed policy requires that variances "be adopted on a case-by-case basis in accordance with the requirements of 40 CFR 131.14." However, these are federal requirements that only apply to surface waters of the U.S. We believe that Regional Boards should also be allowed to grant variances from meeting certain water quality standards for groundwater. But, it should not be necessary to show that one of the conditions listed in 40 CFR 131.10(g) applies in order to authorize a groundwater variance. In order to avoid jurisdictional confusion and avoid imposing unnecessary regulatory requirements, the Central Valley Board chose to use the term "Exceptions" when describing a variance from meeting water quality standards for groundwater. This is a useful distinction and underscores the need to separate surface waters from groundwaters as the new variance/exceptions policy is being developed.

We recognize that given this early stage in the process, the scoping document may not provide all details and final language that may ultimately be proposed for adoption. Accordingly, we request and look forward to an opportunity to further review and comment on the final draft language proposed for the Variance Policy.

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Thank you for the opportunity to provide these initial Scoping Comments on the proposed Variance Policy. We look forward to working with State Board staff on this important new initiative. If you have any questions, please contact me at (714) 955-0630.

Sincerely,



Chris Crompton, Manager
Water Quality Compliance

Cc: Orange County Stormwater Permittees