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VIA ELECTRONIC MAIL

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Subject: WSPA Comments on Proposed Amendments to State Board Action or Failure to Action
by Regional Board

Mr. Regan,
The Western States Petroleum Association (WSPA) is a non-profit trade association representing twenty-six companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California, Arizona, Nevada, Oregon, Washington and Hawaii.

WSPA submits the attached underline/strikeout comments to the proposed amendments to Chapter 6 which governs the procedures under which the State Water Board may review a petition challenging an action or failure to action by a regional water quality control board.

Our proposed recommendations are limited to highlighted in the color blue in the attachment. We used the proposed text for mark up to assist in identifying our requested changes.

We appreciate the opportunity to provide input on this matter, and believe the changes will improve the regulation for both the State Water Board and the regulated community.

If you have any questions, please feel free to contact me at the information below. Thank you.

Sincerely,

Proposed Amendments to the California Code of Regulations

Title 23. Waters.

Division 3. State Water Resources Control Board

The State Water Board has proposed several changes to sections 2050, 2050.5, and 2051 of Title 23 of the California Code of Regulations. These provisions contain the regulations addressing Petitions to challenge the action or inaction of Regional Boards (or Local Oversight Programs). WSPA supports these changes, with the suggested minor modifications noted below. WSPA further proposes additions to section 2053, the regulation addressing Stay Requests, for consistency with the other proposed changes. Comments on the proposed rulemaking are due April 30, 2014.

The complete text of the proposed revisions follows. The text from the State Board is in black and WSPA's proposed modifications are in **blue**. Bolded and underlined text indicates proposed additions to the existing rules, while strike-outs indicate proposed deletion

WSPA Proposes the Following (Blue) Minor Modifications to Proposed Rulemaking:

§ 2050. Petition for Review by State Board.

(a) Any petition by an aggrieved person to the state board for review under Water Code Section 13320(a) of an action or failure to act by a regional board shall be submitted in writing and received by the state board within 30 days of any action or failure to act by a regional board. The petition shall contain the following:

- (1) Name, address, telephone number and email address (if available) of the petitioner.
- (2) The specific action or inaction of the regional board which the state board is requested to review and a copy of any order or resolution of the regional board which is referred to in the petition, if available. If the order or resolution of the regional board is not available, a statement shall be included giving the reason(s) for not including the order or resolution.
- (3) The date on which the regional board acted or refused to act or on which the regional board was requested to act.
- (4) A full and complete statement of the reasons the action or failure to act was inappropriate or improper.
- (5) The manner in which the petitioner is aggrieved.
- (6) The specific action by the state or regional board which petitioner requests.
- (7) A statement of points and authorities in support of legal issues raised in the petition, including citations to documents or the transcript of the regional board hearing ~~where appropriate~~ **if it is available**.

(8) A statement that the petition has been sent to the appropriate regional board and to the discharger, if not the petitioner.

(9) A statement that the substantive issues or objections raised in the petition were raised before the regional board, or an explanation of why the petitioner was not required or was unable to raise these substantive issues or objections before the regional board.

(b) Service of a petition may be made by U.S. mail, by hand delivery, by facsimile with hard copy to follow, or via e-mail ~~by prior arrangement to~~ **waterqualitypetition@waterboards.ca.gov**. [In the case of service by facsimile, only the petition itself shall be sent. All exhibits shall be included with the hard copy.] The petition must be received by the state board no later than 5:00p.m. 30 days following the date of the action or inaction by the regional board, except that if the thirtieth day following the date of the action or inaction falls on a Saturday, Sunday, or state holiday, the petition must be received by the state board no later than 5:00p.m. on the first business day following.

(c) If the action or inaction that is the subject of the petition was taken by the regional board after notice and opportunity to comment, the petition to the state board shall be limited to those substantive issues or objections that were raised before the regional board.

(d) The state board shall notify the petitioner of the assigned petition number and the date the state board received the petition.

§ 2050.5 Complete Petitions; Responses; Time Limits.

(a) Upon receipt of a petition that complies with section 2050 the state board may either dismiss the petition pursuant to section 2052, or may provide written notification to the petitioner, informing the discharger (if not the petitioner), the regional board, and other interested persons that they shall have 30 days from the date of mailing such notification to file a response to the petition with the state board. The regional board shall file the administrative record within this 30-day period, including a copy of the tape recording of the regional board action, or a transcript, if available. Responses to petitions and any other submissions shall be served concurrently upon the petitioner, the discharger (if not the petitioner) and the regional board, by any method listed in section 2050, **subdivision** (b). Any points and authorities filed in response to the petition shall include citations to documents or the transcript of the regional board hearing where appropriate. The time for filing a response or the administrative record may be extended by the state board. Additional submissions will be allowed only upon written request and at the discretion of the state board.

(b) The state board shall review and act on the petition within 270 days from the date of mailing the notification described in **subdivision** (a), unless a hearing is held by the state board. If a hearing is held, the state board shall act on the petition within 330 days from the date of mailing the notification described in **subdivision** (a), or within 120 days of the close of the hearing, whichever is later. If formal disposition is not made by

the state board within these time limits the petition is deemed denied. These time limits may be extended for a period not to exceed 60 days with written agreement from the petitioner. The time limits for formal disposition do not apply while action on a petition is held in abeyance, as provided in **section 2050.5 subdivision** (d).

(c) The state board may, on its motion, review a regional board's action or failure to act for any reason, including lack of formal disposition by the state board within the time limits provided in **subdivision** (b).

(d) A petition may be held in abeyance at the request or with the agreement of the petitioner.

(1) A request or agreement to hold a petition in abeyance must be in writing and shall be provided to the state board, the regional board, and the discharger, if not the petitioner.

(2) Petitions may be held in abeyance unless the regional board provides reasonable grounds for objection. For petitions challenging the assessment of administrative civil liability or penalties, written agreement from the regional board is required.

(3) The time limits for formal disposition and for filing a response to the petition **and for filing a response to the petition and the administrative record** shall be tolled during the time a petition is held in abeyance, and shall recommence running when the petition is removed from abeyance.

(e) Unless a petition is being held in abeyance pursuant to subdivision (d) of this section, the state board shall issue the notification described in subdivision (a) within 90 days of receipt of a petition for review, based on the date as indicated in the notice provided pursuant to subdivision (d) of section 2050. If the state board has not provided the notification described in subdivision (a) within the 90-day period provided by this subdivision, the state board deems the petition dismissed by operation of law effective the 91st day following receipt of the petition, which shall constitute a denial of review for purposes of Water Code Section 13330(b). The time limit for providing the notification described in subdivision (a) shall be tolled during the time a petition is held in abeyance, and shall recommence running when the petition is removed from abeyance. A party aggrieved by a regional board final decision or order for which the state board dismisses a petition pursuant to this subdivision must file any judicial challenge within the 30-day period for judicial review allowed by Water Code section 13330, subdivision (b).

(f) For petitions received by the state board before the effective date of subdivision (e) that are not being held in abeyance and for which the state board has not issued the notification described in subdivision (a), the time limit for providing the notification described in subdivision (a) shall be as follows:

(1) For petitions received before January 1, 2011, within 120 days of the effective date of subdivision (e).

(2) For petitions received from January 1, 2011 to December 31, 2012, within 240 days of the effective date of subdivision (e).

(3) For petitions received from January 1, 2013 to the day before the effective date of subdivision (e), within one year of the effective date of subdivision (e).

(g) If the state board has not provided the notification described in subdivision (a) within the periods specified in subdivision (f)(1) through (f)(3), the state board deems the petition dismissed by operation of law effective the day following the respective period described in subdivision (f)(1) through (f)(3), which shall constitute a denial of review for purposes of Water Code Section 13330(b). The time limit for providing the notification described in subdivision (a) shall be tolled during the time a petition is held in abeyance, and shall recommence running when the petition is removed from abeyance. A party aggrieved by a regional board final decision or order for which the state board dismisses a petition pursuant to this subdivision must file any judicial challenge within the 30-day period for judicial review allowed by Water Code section 13330, subdivision (b).

§ 2051. Defective Petitions.

(a) Upon receipt of a petition that does not comply with Section 2050, the state board shall notify the petitioner of the manner in which the petition is defective and the time within which an amended petition may be filed, unless the petition is dismissed pursuant to section 2052.

(b) If a properly amended petition is not received by the state board within the time allowed, the petition shall be dismissed deemed withdrawn unless cause is shown for an extension of time.

Note: Authority cited: Section 1058, Water Code. Reference: Section 13320, Water Code.

WSPA Proposes One Addition to the Proposed Rulemaking:

The proposed rulemaking does not address Section 2053, which pertains to Stay Orders accompanying Petitions to the State Board. WSPA proposes the following modifications to Section 2053(d) to make it consistent with the proposed changes to Sections 2050, 2050.5 and 2051.

§ 2053. Stay Orders.

(a) A stay of the effect of an action of a regional board shall be granted only if petitioner alleges facts and produces proof of all of the following:

- (1) substantial harm to petitioner or to the public interest if a stay is not granted,
- (2) a lack of substantial harm to other interested persons and to the public interest if a stay is granted, and

(3) substantial questions of fact or law regarding the disputed action.

A petition for a stay shall be supported by a declaration under penalty of perjury of a person or persons having knowledge of the facts alleged.

(b) Upon a documented showing by petitioner that the request complies with the prerequisites for a stay, the state board shall issue a notice to all interested persons that a stay is being considered.

(1) The state board must hold a hearing prior to issuing a stay if requested by any of the following: the petitioner, the discharger (if not the petitioner), the regional board, any person designated as a party by the regional board, or any person designated pursuant to subparagraph (2). A hearing may be held by the state board or a member of the state board.

(2) Any interested person may request that the board designate him or her as a party consistent with section 648.1, subdivision (a). The request shall include a statement explaining the basis for requesting designated party status, including why the petitioner, discharger (if not the petitioner), regional board, or any other designated party does not adequately represent the person's interests.

(3) If a hearing is held, notice shall be given in such manner and to such persons, in addition to the petitioner, as the board deems appropriate.

(4) A request for a stay may be denied without a hearing.

(5) If no hearing is held, the state board may issue a stay only after providing all interested persons with notice and an opportunity to comment on the request for stay.

(c) Nothing in subsection (a) shall preclude the state board from issuing a stay of the effect of an action of a regional board, upon its own motion. The requirement of a declaration under penalty of perjury may be waived by the board in case of an emergency.

(d) The state board shall review and act on the request for a stay within 60 days **of receipt of the petition and stay request, as indicated in the notice provided pursuant to subdivision (d) of section 2050. ~~from the date of mailing the notification described in section 2050.5(a).~~ If the state board has neither granted nor denied a request for stay within 60 days of receipt of the petition and stay request, as indicated in the notice provided pursuant to subdivision (d) of section 2050, the stay request will be dismissed by operation of law effective the 61st day following the stay request.** This 60-day limit may be extended by written agreement from the petitioner.