



# COUNTY OF LOS ANGELES

## DEPARTMENT OF PUBLIC WORKS

*"To Enrich Lives Through Effective and Caring Service"*

900 SOUTH FREMONT AVENUE  
ALHAMBRA, CALIFORNIA 91803-1331  
Telephone: (626) 458-5100  
<http://dpw.lacounty.gov>

GAIL FARBER, Director



ADDRESS ALL CORRESPONDENCE TO:  
P.O. BOX 1460  
ALHAMBRA, CALIFORNIA 91802-1460

October 18, 2016

IN REPLY PLEASE

REFER TO FILE: WM-9

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th floor  
Sacramento, CA 95814

Dear Ms. Townsend:

### COMMENT LETTER – WATER QUALITY ENFORCEMENT POLICY

The County of Los Angeles and the Los Angeles County Flood Control District appreciate the opportunity to provide comments on the proposed revisions to the Water Quality Enforcement Policy. Enclosed are our comments for your review and consideration.

If you have any questions, please contact me at (626) 458-4300 or [ageorge@dpw.lacounty.gov](mailto:ageorge@dpw.lacounty.gov) or your staff may contact Mr. Paul Alva at (626) 458-4325 or [palva@dpw.lacounty.gov](mailto:palva@dpw.lacounty.gov).

Very truly yours,

GAIL FARBER  
Director of Public Works

A handwritten signature in cursive script that reads "Angela R. George".

ANGELA R. GEORGE  
Assistant Deputy Director  
Watershed Management Division

GA:ba

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Enc.

cc: County Counsel (Lillian Salinger)

**THE COUNTY OF LOS ANGELES AND THE LOS ANGELES COUNTY  
FLOOD CONTROL DISTRICT'S COMMENTS REGARDING THE PROPOSED  
REVISIONS TO THE STATE WATER RESOURCES CONTROL BOARD'S WATER  
QUALITY ENFORCEMENT POLICY**

The County of Los Angeles (County) and the Los Angeles County Flood Control District (District) submit these comments on the proposed revisions to the State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy). The County and District support the overall goal of clarifying the Enforcement Policy to make it more fair, effective and consistent. To further that goal, the County and District suggest the following clarifications be made with respect stormwater discharges, Class I violations, and taking into account a discharger's culpability and past history when assessing violations.

**I. Monetary Assessments in Administrative Civil Liability Actions: Stormwater Discharges**

The current Enforcement Policy provides that violations of NPDES permit effluent limitations generally should be addressed on a per day basis, as opposed to a per gallon basis, with some exceptions. The proposed revisions provide that the Water Boards should consider assessing penalties on both a per gallon and per day basis. (Proposed Enforcement Policy, page 13) The County and District request that penalties for violations arising from municipal stormwater discharges should continue to be assessed on a per day basis due to the unique characteristics of municipal stormwater discharges.

First, unlike other NPDES discharges, municipal stormwater discharges are highly variable. During rain events, a vast quantity of water is conveyed through a complex network of storm drains in order to provide flood control to protect life and property. Likewise, municipalities do not control the volume of water flowing through their system or the pollutants that enter it. For these reasons, the Clean Water Act treats municipal stormwater permittees differently from other NPDES Permittees. See 33 U.S.C. § 1342(p)(3)(B)(iii). Second, in light of the large quantity of stormwater discharged during wet weather events, there is no direct equivalency between the discharge volume and the magnitude of potential harm. Third, accurately measuring the volume of a stormwater discharge in a large and complex storm drain network is extremely difficult and costly, leading to a lack of consistency which the Enforcement Policy revisions are trying to prevent.

Therefore, the Enforcement Policy should recognize the unique challenge of stormwater and not include municipal stormwater permittees in the category of potential violators against whom per gallon penalties can be assessed. Accordingly, the County and District request that page 13 of the proposed Enforcement Policy be

revised to explicitly state that per gallon penalties should not be assessed on municipal stormwater discharges.

## **II. Class I Violations: MUN Designated Water Bodies**

The proposed Enforcement Policy intends to reduce the classes of violations from three to two. Under the revisions, Class I violations will be those that impose an immediate and substantial threat to water quality or have the potential to individually or cumulatively cause significant detrimental impacts to human health or the environment. (Proposed Enforcement Policy, page 5)

Included in the proposed Class I violations are “Discharges causing or contributing to exceedances of primary maximum contaminant levels in receiving waters with a beneficial use of municipal and domestic supply (MUN).” Because these violations are meant to be directed to discharges that impose an immediate and substantial threat to water quality, or have the potential to cause significant detrimental impacts to human health or the environment, the proposed Enforcement Policy should make clear that this provision applies only to receiving waters with an “existing” MUN beneficial use designation, not to waters with a “potential” MUN beneficial use designation.

## **III. Penalty Adjustment Factors**

The current Enforcement Policy provides that, after determining a base penalty, the penalty is to be adjusted for certain factors, including degree of culpability, history of violations, and cleanup and cooperation. (Proposed Enforcement Policy, page 17) The current Enforcement Policy provides for an adjustment multiplier between 0.5 to 1.5 to take into account degree of culpability, and 0.75 to 1.5 to take into account a discharger’s history of violations. However, the proposed revisions provide that, even where a discharger has a lack of culpability or no prior history of any violations, the multiplier in each case should be at least 1.0.

The proposed Enforcement Policy should retain the adjustment multiplier range of 0.5 to 1.5 for degree of culpability, and 0.75 to 1.5 to take into account the discharger’s history of violations. By making the base adjustment at least 1.0 in both cases, a Regional Water Quality Control Board is not allowed to make a clear distinction between a violator with no or few prior violations whose compliance efforts should otherwise be recognized and a violator who does not have the same equities. Instead, the Regional Boards should retain the discretionary authority to apply a multiplier between 0.5 and 1.5, and 0.75 and 1.5, as the case may be, to allow them to take into account the unique circumstances of each case and apply a more appropriate penalty.