



STATE OF CALIFORNIA AUTO DISMANTLERS ASSOCIATION

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October 18, 2016

Public Comment
Water Quality Enforcement Policy
Deadline: 10/18/16 12:00 noon

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



RE: SWRCB's Proposed Revisions to the Enforcement Policy

Dear Ms. Townsend:

On behalf of the State of California Auto Dismantlers Association (SCADA), I am pleased to provide comments in response to the proposed revisions to the State Water Resources Control Board's (SWRCB) Enforcement Policy (Policy).

SCADA represents approximately 150 small and medium sized businesses throughout California. SCADA was formed in 1959 to serve its members in the area of government relations, education, and business. SCADA members are licensed by the state Department of Motor Vehicles and take responsibility for recycling and disposing of end-of-life vehicles (ELV) using environmentally responsible practices.

As we have discussed with the SWRCB and staff in great depth over the past few years, California is facing a significant increase in illegal underground activity in the auto recycling industry that is impacting the environment and putting the responsible, permitted recyclers at a severe economic disadvantage. Of the 28 million registered vehicles in California, about 1.2 million are disposed of annually. Of these, approximately 360,000 (30%) ELVs are being processed through unlicensed and unregulated automobile dismantlers. Unlicensed automobile dismantlers do not follow DMV licensing requirements, insurance obligations, work place safety requirements, tax liability, and environmental regulatory standards as required by law. This has led to illegal dumping and disposing of vehicles, improper hazardous waste handling, cash only transactions, non-payment of sales and income taxes, car thefts, violations of worker safety protections, and lack of ADA compliance. Many of these violations harm California's most vulnerable and underserved communities, making it an environmental, economic, and public health issue.

While the California Water Code under Section 13399.33 provides for mandatory minimum penalties for entities who do not obtain permit coverage for storm water discharges, this Policy provides yet another tool in addressing the growing unregulated, unlicensed activity and the associated economic implications. The fact that the provisions of this Policy can be imposed on top of those mandatory minimum penalties to ensure maximum enforcement against willful non-filers is strongly supported by SCADA. Throughout the Policy, revisions convey the SWRCB's strong support of eliminating the ability for non-compliant entities to realize a competitive economic advantage over compliant entities. The proposed amendments specifically state the following (and variations of it throughout the Policy):

“Formal enforcement should always result when a non-compliant member of the regulated public begins to realize a competitive economic advantage over compliant members of the regulated public. The principle of fairness in enforcement requires that those who are unwilling to incur the expenses of regulatory compliance not be rewarded for making that choice. It is the intent of the state Water Board that formal enforcement should be used as a tool to maintain a level-playing field for those who comply with their regulatory obligations by setting appropriate and counter-balancing civil liabilities for those that do not.” (page 1)

Additionally, the Policy reaffirms the Board’s principle of progressive enforcement on the whole such that an escalating series of actions would be enlisted beginning with notification of violations, ramping up to a complaint for civil liabilities where compliance cannot/is not achieved in a reasonable time or compliance is refused. Such revisions and clarity will seemingly help our members by ensuring regional boards consistently approach enforcement such that those that are striving to be in compliance be given the opportunity to correct at the notification stage rather than the boards seeking immediate civil penalties (except in the more egregious situations or willful noncompliance situations).

All of this said, we note that some of the changes and additions proposed will undoubtedly result in higher proposed monetary penalties on responsible recyclers who strive for compliance and are already struggling to stay in business. In this regard, we appreciate the proposed revisions that suggest consideration of the “ability to pay” enforcement penalties. This paired with the progressive enforcement will be helpful to our responsible members who strive for compliance. We also applaud the proposed revisions that are clear that for those entities willfully avoiding compliance such consideration will not weigh heavily with the priority interest being to not reward willful noncompliance even to the extent of penalties putting an entity out of business to avoid noncompliance and a corresponding economic benefit over those who strive to be in compliance.

On behalf of SCADA, I appreciate your consideration of these comments. If you have questions regarding the points raised in this letter, please contact Gavin McHugh with McHugh, Koepke & Associates at (916) 930-1993. Thank you.

Sincerely,



Greg Pirnik
President
State of California Auto Dismantlers Association

cc: CJ Croys-Schooley, SWRCB
SCADA Government Relations Committee