



CF/43-0-25 State Water Resources Control Board  
(SWRCB) (ID 1181)

October 18, 2016

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

**Subject: Comment Letter – Water Quality Enforcement Policy**

The Sonoma County Water Agency (Water Agency), on behalf of itself and the sanitation district and zones it manages, appreciates the opportunity to comment on the proposed amendments to the State Water Board's Water Quality Enforcement Policy (Policy). The Water Agency supports the thorough comments submitted by the California Association of Sanitation Agencies and, therefore, will provide only brief comments to emphasize the specific areas of concern for the district and zones managed by the Water Agency.

We recognize there are several positive changes in the proposed Policy and support the stated goal that the Policy amendments promote fair, firm, consistent and transparent enforcement. Our specific comments are included below.

**Promote Fairness, Consistency and Equity by Continuing to Allow Comparisons to Similar Enforcement Actions**

While we understand that exact, one-to-one comparisons of penalties between dischargers may not always be appropriate, we respectfully request that the language that appears to eliminate the usage of these types of comparisons be removed on pages 3 and 12 of the redline/strikeout version of the proposed Policy. The penalty calculation methodology goes a long way toward providing equity and consistency in determining penalties, but including this restrictive language removes a potentially useful gauge of equity and consistency in the case of like circumstances. Please consider utilizing the suggested revisions on this issue provided by CASA in their comment letter.

### **“High Volume Discharges”**

The proposed Policy subjects any discharge between 100,000 and 2 million gallons to a penalty ranging from \$2.00 to \$10.00 per gallon. This is a big change from the current Policy which states that a maximum penalty of \$2.00 per gallon should be levied for high volume sewage spills and releases of stormwater, with no volume specified. Additionally, the current Policy specifies a penalty of \$1.00 per gallon for discharges in excess of 2 million gallons or for releases of recycled water that has been treated for reuse. The proposed Policy states that the “...Water Boards may elect to use a maximum of \$1.00 per gallon...” for these violations, but further states that these provisions are advisory. This approach does not provide much guidance to staff developing enforcement actions and could result in significant increases in potential liability as compared to implementation of the current Policy. To address these concerns, please consider implementing the recommendations on this subject provided by CASA.

### **Changes to Per Gallon, Per Day and Violator’s Conduct Factors**

The proposed Policy includes changes to the “Per Gallon Factor for Discharges” (Table 1, Page 18), “Per Day Factor for Discharges” (Table 2, Page 19) and “Violator’s Conduct Factors” (Table 4, Page 23). It appears that these factors will result in an increase the base amount of discretionary penalties in enforcement actions if the proposed Policy is adopted as drafted. Of particular note is the proposed open-ended “History of Violations” factor. Because circumstances are constantly evolving at regulated facilities, requiring enforcement staff to use a minimum multiplier of 1.1 if **any** violations occurred in the past could result in harsh penalties. This could be the case even if past violations have been completely addressed and ceased. We request some information justifying the changes in these factors be provided and that consideration be given to restoring the factors to their previous levels if the changes are not warranted.

### **Compliance Projects and Ability to Pay**

It would be very helpful if the Policy could make a distinction between small versus disadvantaged communities and provide options for both. As the operator of wastewater facilities in small, disadvantaged and small-disadvantaged communities we see first-hand the burden that paying penalties can have on a community with a small ratebase (population), even if the community is not “disadvantaged”. The proposed Policy only allows for penalties to be spent on compliance projects in communities that are both small and disadvantaged. Please consider providing more flexibility by allowing facilities serving small communities and disadvantaged communities the opportunity to utilize penalties for compliance projects. We also agree with CASA’s comments on the need to include language in the Policy that makes it clear that a public wastewater system continues to have the opportunity to make an “ability to pay” argument during enforcement proceedings.

Other Water Agency concerns noted in the proposed Policy and addressed in the CASA comment letter include:

1. The additions to the list of criteria used to determine Class I priority violations may not all be appropriate.
2. Requiring recovery of all economic benefit to all discretionary ACL actions, which is inconsistent with the Water Code.
3. The inclusion and use of the term "potential harm" is vague and subject to disparate interpretations.

Thank you for consideration of the above comments. If you have any questions or need clarification, please contact Pam Jeane at (707) 521-1864 or [Pam.Jeane@scwa.ca.gov](mailto:Pam.Jeane@scwa.ca.gov).



Pamela Jeane, P.E.

Water Agency Assistant General Manager – Water and Wastewater Operations

c: CJ Croys-Schooley, State Water Resources Control Board, 1001 I Street, 16th Floor, Sacramento, CA 95814; [cj.croys-schooley@waterboards.ca.gov](mailto:cj.croys-schooley@waterboards.ca.gov)