

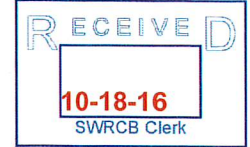
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ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7  
100 NORTH CANYONS PARKWAY, LIVERMORE, CA 94551-9486 • PHONE (925) 454-5000

October 18, 2016

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814



*[Sent via email to commentletters@waterboards.ca.gov]*

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

Dear Ms. Townsend:

Zone 7 Water Agency (Zone 7) is responsible for providing wholesale drinking water to over 220,000 people in the cities of Livermore, Pleasanton, Dublin and a portion of Dougherty Valley in the City of San Ramon. Zone 7 also supplies untreated irrigation water primarily to agricultural customers, manages the local groundwater basin and provides both watershed stewardship and flood protection services for Eastern Alameda County. Zone 7 works with the San Francisco Bay Regional Water Quality Control Board regularly as a permittee under multiple NPDES permits and stream and watershed management project-based permits.

Zone 7 supports the State Water Resource Control Board's (WRCB) goal of fair, consistent and transparent enforcement across the State and across types of discharges and violations. Establishing firm - but reasonable - relationships between the penalty applied and the violation imposed is an appropriate approach for the WRCB in that it should help to reduce the number of blatant violations observed while also improving communication between the Board and regulated entities.

Zone 7 appreciates WRCB's efforts thus far to update the Water Quality Enforcement Policy (policy) and prioritize enforcement. However, as stated in Zone 7's first round of comments on this effort (August 25, 2016 – copy attached), Zone 7 strongly encourages WRCB to initiate a stakeholder involvement process prior to preparing a final policy for board adoption. In addition, a final policy should include examples of how new approaches would be imposed, including sample calculations of monetary assessments for Administrative Civil Liability Actions.

With the proposed policy, Zone 7 has some specific concerns about the application of the policy to newly-regulated discharges under the Statewide NPDES Permit for Drinking Water System Discharges (Order WQ 2014-0194-DWQ). These concerns are discussed below, organized by section of the proposed amended policy. Page numbers are from the comparison document (track changes) provided by WRCB.

*VI. Monetary Assessment in Administrative Civil Liability (ACL) Actions*

*A. Penalty Calculation Methodology*

*Step 1 – Actual or Potential for Harm for Discharge Violations*

*Factor 1: The Degree of Toxicity of the Discharge (page 14)*

3 The “degree of toxicity of the discharge” is intended to account for the physical, chemical, biological and /or thermal nature of the discharge, waste, fill or other material. Per the Initial Statement of Reasons for the policy amendments, the current regulations do not include temporal limits, which has led to inconsistency in how the statutory factor is applied. The amendments seek to improve consistency by specifying that the degree of toxicity of the discharge is to be determined based on the characteristics of the material prior to discharge.

This proposed change would unfairly penalize potable water discharges, where the greatest risk to receptors is from the chlorine concentration of the discharge. The chlorine concentration of the water prior to discharge must meet the minimum specified by the Safe Drinking Water Act, California Code of Regulations Title 22. The concentration of chlorine in the water prior to discharge would pose a significant risk to sensitive receptors and thus a value of 4 would be selected, the highest value. This simplistic calculation does not acknowledge the quick dissipation of chlorine in the environment from volatilization and reaction with dirt and organic matter, especially for smaller spills.

WRCB’s analysis in determining the effluent limitation for chlorine in the NPDES Permit for Drinking Water System Discharges finds that the dissipation of chlorine is so rapid that a numeric effluent limit is only applied to potable water discharges made within 300 feet of a receiving water body. Under the amended policy, without considering the temporal nature of a discharge’s toxicity, potable water discharges may be given the same factor as oil spills and other highly toxic and persistent contaminants. The degree of persistency of the toxicity should be acknowledged and be a factor in determining liability.

*Factor 3: Susceptibility to Cleanup or Abatement (page 16)*

4 This factor is proposed to be determined as follows: A score of 0 is assigned if the discharger cleans up 50% or more of the discharge within a reasonable time. A score of 1 is assigned if less than 50% of the discharge is susceptible to cleanup or abatement or if 50% or more of the discharge is susceptible to cleanup or abatement but the discharger failed to clean up 50% or more of the discharge within a reasonable time. Natural attenuation of discharged pollutants in the environment is not considered cleanup or abatement for purposes of evaluating this factor.

For discharges of potable water, a factor of 1 must be selected because the water cannot be cleaned up. Because chlorine naturally attenuates in the environment, drinking water system dischargers are unfairly penalized. Far more toxic and persistent discharges, such as an oil spill, may receive a factor of 0 because they are able to be partially cleaned up. While Zone 7 supports rewarding those who clean up their dischargers in a timely manner, non-persistent discharges that are not amenable to cleanup and abatement should not be unfairly penalized.

Step 2 – Assessments for Discharge Violations  
High Volume Discharges (page 19)

5 This section states “For discharges in excess of 2,000,000 gallons, or for discharges of recycled water that has been treated for reuse, the Water Boards may elect to use a maximum of \$1.00 per gallon with the above factor to determine the per gallon amount.” Drinking water system discharges should be included in this statement along with recycled water. Drinking water system discharges and recycled water discharges are similar in nature and toxicity.

Step 4 – Adjustment Factors  
Violator’s Conduct Factors (page 23)

Degree of Culpability –

6 The proposed amendments change the range for the degree of culpability multiplier from 0.5 – 1.5 to 1.0 – 1.5. This proposed change is not discussed in the Initial Statement of Reasons. The option of a less than 1.0 multiplier should remain in the policy for instances where the discharger was not culpable in the discharge, such as when a third party hits a utility pipe during construction or a vehicle accident causes a fire hydrant to have a release.

History of Violations –

7 The revised policy specifies that “Where the discharger has any history of prior violations, a minimum multiplier of 1.1 should be used” (emphasis on “any” added). This can penalize good actors who have had discharges outside of their control (such as the contractor and vehicle accident examples in “degree of culpability,” above) or who have had very few discharges. There is also no time limit on the history, one discharge over ten years ago and multiple recent discharges may be treated the same. A more prescriptive policy with a maximum value and time period would allow for fairer implementation across the State.

Zone 7 appreciates the extension of time granted for commenting and the opportunity to provide comments on the draft policy.

Comment Letter – Water Quality Enforcement Policy  
October 18, 2016  
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If you have any questions, please feel free to contact either me (at the phone number above or by email at [jduerig@zone7water.com](mailto:jduerig@zone7water.com)) or Emily Moshier (at 925 454-5035 or by email at [emoshier@zone7water.com](mailto:emoshier@zone7water.com)).

Sincerely,



G.F. Duerig  
General Manager

Attachment – August 25, 2016 letter

cc: CJ Croyts-Schooley, WRCB  
Kurt Arends  
Carol Mahoney  
Jarnail Chahal  
Rhett Alzona  
Amparo Flores  
Emily Moshier  
Elke Rank



ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7  
100 NORTH CANYONS PARKWAY, LIVERMORE, CA 94551-9486 • PHONE (925) 454-5000

August 25, 2016

Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814

*[Sent via email to [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov) ]*

Subject: ***Request for extension on comment period and additional stakeholder outreach for proposed amendments to the Water Quality Enforcement Policy***

Dear Ms. Townsend:

Zone 7 Water Agency is a public agency responsible for providing wholesale drinking water to over 220,000 people in the cities of Livermore, Pleasanton, Dublin and a portion of Dougherty Valley in the City of San Ramon. Zone 7 also supplies untreated water to agricultural customers, manages the local groundwater basin and provides both watershed stewardship and flood protection services. Zone 7's operations comply with various permits administered by the State Water Resources Control Board and the Regional Water Quality Control Board – San Francisco Bay Region. Further, Zone 7 engages Water Board staff in master planning for our watershed projects and preparation of resource management plans.

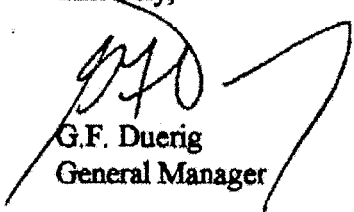
Zone 7 values the opportunity to comment on the proposed amendments to the Water Quality Enforcement Policy. Currently, comments are due by September 13, 2016, just a couple weeks away. Unfortunately, we are unaware of any stakeholder engagement leading up to the comment period and find the thirty-day period insufficient to analyze the potential effects of the proposed policy. Therefore, we request an extension of at least 45 days to allow for an adequate review and response, with time to engage with Water Board staff regarding the proposed amendments.

Zone 7 appreciates the stakeholder engagement efforts that the State Board has implemented in recent years. Most recently, the workshops and availability of Water Board staff leading up to adoption and implementation of the NPDES Permit for Drinking Water System Discharges was instrumental in our successful application and early compliance with the permit. We request that similar outreach be implemented for these proposed amendments to the Water Quality Enforcement Policy to provide for transparency in the process.

Ms. Jeanine Townsend  
August 26, 2016  
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If you have any questions, please feel free to contact me at the number above or via email at [jduerig@zone7water.com](mailto:jduerig@zone7water.com).

Sincerely,



G.F. Duerig  
General Manager

cc: Cindy Tuck, ACWA  
Kurt Arends  
Jarnail Chahal  
Rhett Alzona  
Emily Moshier  
Athena Watson