

**State of California
Office of Administrative Law**

In re:
State Water Resources Control Board

Regulatory Action:

Title 23, California Code of Regulations

Adopt section: 2910

Repeal section: 2910

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11353

OAL Matter Number: 2017-0828-01

OAL Matter Type: Regular (S)

On April 4, 2017, the State Water Resources Control Board adopted Resolution No. 2017-0020, which revised the Water Quality Enforcement Policy to (1) clarify principles that guide enforcement, (2) amend policies relating to case prioritization, violation ranking, and penalty calculation methodology, and (3) make other technical changes for clarity.

OAL approves this regulatory action pursuant to Government Code section 11353.

Date: October 5, 2017



**Nicole C. Carrillo
Attorney**

**For: Debra M. Cornez
Director**

**Original: Eileen Sobeck
Copy: Naomi Kaplowitz**

NOTICE PUBLICATION REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2017-0828-015	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

OCT 05 2017

1:49 P.M.

2017 AUG 28 A 11:06
OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
State Water Resources Control Board

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Water Quality Enforcement Policy		TITLE(S) 23	FIRST SECTION AFFECTED 2910	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Naomi Kaplowitz		TELEPHONE NUMBER (916) 341-5677	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Water Quality Enforcement Policy	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT Division 3, Chapter 22, Section 2910
	AMEND
	REPEAL Division 3, Chapter 22, Section 2910
TITLE(S) 23	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §511346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input checked="" type="checkbox"/> Other (Specify) <u>Gov. Code 11353</u>	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) <u>Upon approval (see Gov. Code 11353)</u>
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON Naomi Kaplowitz	TELEPHONE NUMBER (916) 341-5677	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) naomi.kaplowitz@waterboards.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE August 11, 2017
TYPED NAME AND TITLE OF SIGNATORY Michael Lauffer, Acting Executive Director, State Water Resources Control Board	

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ENDORSED APPROVED

OCT 05 2017

Office of Administrative Law

CALIFORNIA CODE OF REGULATIONS
TITLE 23. WATERS
DIVISION 3. STATE WATER RESOURCES CONTROL BOARD AND
REGIONAL WATER QUALITY CONTROL BOARDS
CHAPTER 22. STATE POLICY FOR WATER QUALITY CONTROL

§ 2910. Concise Summary of Regulatory Policy on Water Quality Enforcement.

On April 4, 2017, the State Water Resources Control Board adopted Resolution No. 2017-0020, rescinding Resolution No. 2009-0083 and the existing Water Quality Enforcement Policy (Enforcement Policy) and approving the revised Enforcement Policy. The overarching goal of the Enforcement Policy is to protect and enhance the quality of the waters of the State by defining an enforcement process that addresses water quality problems in the most efficient, effective, consistent, and transparent manner. It is intended to better enable the State Water Resources Control Board and Regional Water Quality Control Boards (Water Boards) to expend their limited resources in ways that openly address the greatest needs, deter harmful conduct, protect the public, and achieve maximum water quality benefits. The Enforcement Policy implements and provides guidance regarding the Water Boards' use of enforcement powers set forth in Division 7 of the Water Code (commencing at Water Code Section 13000) and related statutes.

More specific goals and a summary of the proposed revisions include:

- Clarify that the principle of "fairness" relates to eliminating the economic advantage of those who do not comply. Fairness is in relation to the regulated community that voluntarily complies;
- Infuse the principle of transparency to assure that findings are based on evidence and/or policy;
- Clarify that, in certain cases, it may be appropriate to bring independent enforcement against a Permittee's contractors and/or agents;
- Encourage the Water Boards to consider informal enforcement and/or compliance assistance for Publicly Owned Treatment Works serving disadvantaged Environmental Justice communities (in addition to those serving small communities);
- Detail the case prioritization process and change the violation classification scheme
- Eliminate the goal of automating case prioritization process through data algorithms;
- Amend the Penalty Calculation Methodology to eliminate inconsistencies, improve clarity, and revise definitions.

~~On November 17, 2009, the State Water Resources Control Board adopted Resolution No. 2009-0083, rescinding Resolution 2002-0040 and the existing Water Quality Enforcement Policy (Enforcement Policy) and approving the revised Enforcement Policy. The overarching goal of the Enforcement Policy is to protect and enhance the~~

quality of the waters of the State by defining an enforcement process that addresses water quality problems in the most efficient, effective, and consistent manner. It is intended to better enable the State Water Resources Control Board and Regional Water Quality Control Boards (Water Boards) to expend their limited resources in ways that openly address the greatest needs, deter harmful conduct, protect the public, and achieve maximum water quality benefits. The Enforcement Policy implements and provides guidance regarding the Water Boards' use of enforcement powers set forth in Division 7 of the Water Code (commencing at Water Code Section 13000) and related statutes.

More specific goals and a summary of the proposed revisions include:

- Greater focus on "policy" statements and minimization of "guidance;"
- Acknowledgment of the specific needs and limitations of publicly owned treatment works and sewage collection systems that serve small communities;
- New violation ranking criteria to help Water Board staff and management more readily identify the highest priority violations;
- Process for prioritizing enforcement actions;
- Description of circumstances that may prompt the State Water Board to exercise its enforcement authority;
- Penalty calculation methodology to help ensure consistency in the Water Boards' approach and analysis of factors when determining ACL penalty amounts;
- More realistic suggested timeframe for issuance of mandatory minimum penalties;
- Updates to reflect recent statutory changes to the definition of "small communities" for purposes of determining when a discharger qualifies for applying a mandatory minimum penalty toward a compliance project;
- Policy statements regarding the definition of a "Discharge Monitoring Report;"
- Policy statements limiting the authority for a Regional Water Board to allow compliance projects in administrative civil liabilities unless expressly provided for in statute;
- General alignment of the Policy with new and existing statutory authorities;
- Mechanism to allow dischargers to make capital or operational improvements beyond those required by law (that are separate from projects designed to merely bring a discharger into compliance);
- Requirements for timely documentation of violations and enforcement actions in Water Board databases; and
- Requirements to keep the public informed of State and Regional Water Board performance with regard to enforcement activities.

Note: Authority cited: Sections 13140 and 13399, Water Code. Reference: Sections 13140 and 13399, Water Code.