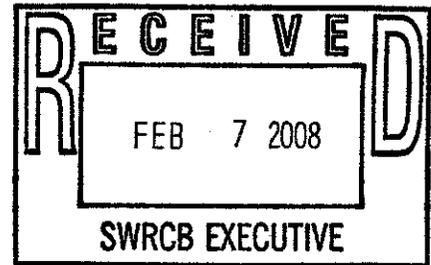


February 6, 2008



Via FedEx Overnight
Via Electronic Mail

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

RE: Proposed Revisions to the Water Quality Enforcement Policy

Dear Ms. Townsend:

We are writing to express strong opposition to the proposal to limit supplemental environmental projects (SEPs). We are including some specific examples as to why we believe that discretion on SEPs must be left with the Regional Water Boards who now use them as important community-enhancing regulatory mechanisms.

We have experience with successful SEPs, including giving an educational presentation requested by the State Water Resources Control Board's (State Water Board) enforcement personnel in 2004. This presentation was attended by members of the State Water Board's enforcement personnel and several Regional Water Boards. It was apparent at the time SEPs had a valuable place in the enforcement process. We believe SEPs serve to strengthen organizational and personal relationships in our watershed. We believe the formula of limiting them to 75% of the total fine amount is a policy that works and should not be changed. While the occasional abuse of this system must be discouraged, we think this is a case of something not broken that requires no fix.

Even though it offers some shelter, SEPs do not completely eliminate public scrutiny or accountability. No matter the cause, violations are serious blemishes on the records of public employees and the district's boards of directors. These events provide ample existing deterrents that require no enhancement as suggested in the draft guidance. Benefits for not changing the current SEP policy are listed as follows.

For public agencies, SEPs provide an important mechanism for keeping local ratepayer dollars within the community and ensuring that the public that pays the fine receives some of the benefit.

Without exception sanitary agencies all have goals to first and foremost protect public health and the environment. Notably, SEPs provide a vehicle for the



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various public agencies (Regional Water Boards, sewerage agencies and the ratepayers they serve) to maintain good relations, preserve professional standing, and enhance community relationships in the midst of negative enforcement processes. The benefitting communities recognize SEPs as valuable to improvement of the environment. The fines eat into budgets intended for collection system maintenance and upgrade, staffing, treatment plant improvements, and local community wish-list projects related to the Districts.

The availability of SEPs is an important factor in the ability and willingness of local governing boards to settle enforcement actions without a hearing before the Regional Water Board. The requirements for reporting on SEPs have built in checks and balances so this allows for the projects to take place without encumbering the Regional Water Boards staff and time and resources.

Education and outreach programs are important tools to achieve the State's water quality goals.

Our District provided a Wetlands Interpretive Center with fine monies from an Administrative Civil Liability action in 1996. Although the amount of the fine was approximately \$10,000, this project would not have been completed under the newly proposed policy. The SEP option provided seed money for an ongoing environmental educational program that provides nearly 10,000 educational hours per year to 3rd, 4th, and 5th graders from Contra Costa and Solano Counties. The year it was implemented, the program received the *Public Education Award* from the California Water Environment Association (CWEA) at both the regional and state level for its hands-on approach to teaching students about wastewater treatment, water pollution, and wetland habitat protection. The program received the honor again at the CWEA regional level in 2006. For the school year 2006-2007, an average of 71 classes participated in the program, which was a 10% increase from the year before. The number of participating students increased 5%. The curriculum includes "America's Wetlands" provided by the U.S. EPA Region 9 and "Healthy Water Healthy People Kids Booklet" supported by Project WET (Water Education for Teachers).

An appreciation for pollution prevention is quantifiable in the number of visitors we return to the District and who say that they have attended the educational programs either as chaperones or observers. These return visitors have wanted a tour of their own or bring in more people to be informed. In the last twelve years, the education program has expanded to include the Boy Scouts, classes from Diablo Valley Community College, and professional groups.

Additionally the program received the benefit of an SEP by neighboring Shell Oil refinery. The SEP provided for new bird blinds for the Moorhen Marsh which are used by the Audubon Society, wetlands photographers, college students, Lindsay Wildlife Museum, just to name a few. These groups have conducted studies on the river otter, beaver, and various bird species.



The way in which the nexus requirement is expressed may make it difficult or impossible to use SEPs in the circumstances where they may be most appropriate.

The typical enforcement action with public agencies is usually for minor violations with no obvious remedy. The violation could be a technical violation such as a noncompliance reporting error. The efficient SEP process should be utilized for even minor violations because the availability of SEPs is an important factor in the ability and willingness of local governing boards to settle enforcement actions without a hearing before the Regional Water Board.

This proposal appears to create more work rather than streamline the program. The Regional Water Boards can reserve the right to assess a penalty on the SEP amount if the SEP is not implemented as proposed as part of the Board's order on the matter.

As a public agency experienced in the SEP process, we strongly encourage leaving the SEP policy alone.

Sincerely,

David R. Contreras
District Manager

Enclosures

Cc: Bobbi Larson, Director, Legal & Regulatory Affairs, CASA