

ENVIRONMENTAL HEALTH DEPARTMENT

LAND USE AGENCY

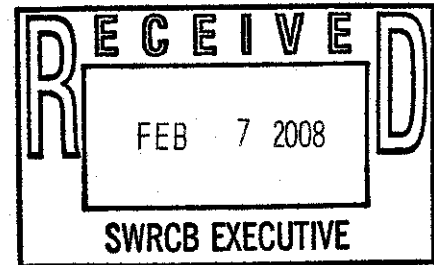
810 COURT STREET • JACKSON, CA 95642-2132 • PHONE (209) 223-6439 • FAX (209) 223-6228



February 7, 2008

2/19/08 BdWrkshp Item 10
Water Quality Enf. Policy
Deadline: 2/7/08 by 12 p.m.

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



Re: Water Quality Enforcement Workshop – 2/19/08

Dear Ms. Townsend:

Thank you for the opportunity to review and comment on the Draft Water Quality Enforcement Policy. In some ways it appears the policy is moving in a direction allowing greater leeway to staff to interpret intent and application. This approach has the potential for both positive and negative results. In some instances, better defined language may be appropriate. In general, Regional Water Board staff have been a valuable resource in the past and we hope that continued and enhanced technical support is encouraged. A general recommendation is, where possible, solicit input from the affected population, whether they be rate payers or those most affected by water quality impacts, in the establishment of ACL penalties, selection of SEPs, CPs or ECAs. My questions and comments below refer to sections and pages in the January 8, 2008 red-line version of the draft document.

Section I E, page 5 - There is reference to establishing a higher priority for recurring or continuous non-NPDES violations. The language struck from this section describes four or more violations in a six month period as a guide. (Retained footnote 1 at the bottom of the page supports the stricken text.) I suggest a definition or guidance for determining a recurring or continuous violation as it applies to this section. Also on page 5 there begins a list of criteria for determining relative enforcement priority. Is the list itself prioritized in order of importance or is each item to be given equal consideration?

In Section III A, page 9 - It is stated that violations that are the result of knowingly avoiding water quality regulations are considered class I priority violations. Is this the case regardless of the specifics of the avoidance and in the absence of any actual or imminent impact to public health or the environment? Would this situation better fit subsection C where it states that class III violations include statutorily required liability for late reporting when such late filings do not result in causing or allowing an unauthorized discharge to continue? Reference to violations that continue over an "unreasonably long period" and "history of noncompliance" are used in subsections A and B. I suggest these terms be defined for use in this context. Would a history including informal enforcement actions be considered as part of the history of noncompliance?

Section IV B, page 16 - Is there any avenue of appeal of informal enforcement actions? How are informal enforcement actions considered in determining a history of noncompliance for purposes of promoting the priority class of formal enforcement?

Section IV C, page 17 - It states that any violation that enables the violator to benefit economically from noncompliance is not considered a minor violation. Is this true in the case that it can be shown that the violator was ignorant of the violation? I also suggest the terms "chronic violations" and "recalcitrant violator" be defined.

Section VII, page 43 - The language states that the defendant must demonstrate that the administrative civil penalty should be less than the statutory maximum. This appears to imply that in all cases the Water Board intends to pursue the maximum penalty allowed. This approach appears to be disadvantageous to the unsophisticated or financially disadvantaged discharger who may not have access to the legal or technical expertise needed to make a strong case in their defense.

Section VII I, page 52 - refers to reduction of an ACL that may result in "widespread hardship to the service population". This approach should be better defined, particularly for the rural Counties.

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Section IX F, page 65 – SEPs should be encouraged due to the increased potential for direct benefit to the community most likely to be affected by the violation(s) in question. In addition to the limitations on percentage of ACL that can be waived in the interest of a SEP, the project tracking, reporting, and oversight provisions appear to be fairly burdensome for projects likely to be considered in a low density rural setting. This factor is further disincentive to the use of the SEP alternative.

Section XIII, page 70 – Will quarterly Summary Violation and Enforcement Reports generated by the Regional Water Boards be accessible to other agencies or the public?

Again, thank you for the opportunity to comment on this proposed policy change. If you have any questions regarding this matter, please feel free to contact this office.

Sincerely,



Michael W. Israel, REHS
Environmental Health Director

MWI:ew

cc: Amador County Board of Supervisors
Terri Daly, Amador County CAO
Jim Abercrombie, Amador Water Agency
Pamela Creeden, RWQCB Enforcement Officer
Kathy Mannion, RCRC Director of Water and Power